DIVISION V.

Inchoate Diligence not carried on, whether it fall by lapse of year and day.

1610. *March* 13. GOODMAN of Ethar *against* EARL of ORKNEY.

No 152.
It was found no nullity in a horning, that the denunciation was more than an year after the charge.

IN an action pursued against the Earl of Orkney, he being debarred by horning used and executed against him by the Goodman of Ethar, it was *alleged*, that the horning was null, because the denunciation was more than year after the date of the last charge. It was *answered*, That the disobedience was the more contemptuous, seeing the Earl had so long time and leisure to obey, and did it not.——In respect whereof, the LORDS sustained the horning, and found the denunciation lawful.

Fol. Dic. v. 1. *p.* 268. *Haddington, MS. No* 1864.

1627. *July* 17. L. FAIRNIE's Bairns *against* L. AITON.

No 153.
Inhibition was sustained, although the execution against the lieges was more than an year after the execution against the party.

IN a reduction at the instance of L. Fairnie, against the L. of Aitoun, for reduction of an infeftment *super capite inhibitionis*, this inhibition was quarrelled, because it was execute against the party prohibited at the market-cross of Cupar, being the head burgh of the sheriffdom; and these executions, albeit duly registrate, yet seeing the same was again, by a new execution, published at the market-cross of St Andrews, as the head burgh of the regality where the lieges were openly inhibited; betwixt the which publication, and the other execution at Cupar, there intervening the space of an year and more, at the which last publication no special execution nor prohibition was made to the party inhibited to annailzie; therefore the defender *contended*, that the inhibition could not be sustained, for he alleged, that the first prohibition, made specially to the party not to annailzie, being execute an year before this last publication made at St Andrews, to the lieges, not to buy nor block, could not be a warrant to make that last publication to subsist, except the party had been also at that same time, or about that time, *de novo*, prohibited to sell; and that the said inhibition, whereof the said executions had so great discontinuance of intervening time betwixt them, ought not to put the subjects in *mala fide*, to have in any

time thereafter bargained with the party, sicklike as if he had never been inhibited at all. This allegeance was repelled, and the inhibition sustained, seeing the party was once lawfully prohibited, and there was no necessity that he should be prohibited over again at the time of the second publication against the lieges. This is to be marked. No 153.

Act. *Nicolson.* Alt. *Aiton.* Clerk, *Gibson.*

Fol. Dic. v. 1. *p.* 268. *Durie, p.* 310.

*** Summonses fall if not called within year and day; *See* Process.

DIVISION VI.

Execution of Charge to enter Heir.

1710. *June* 21.

Mr Patrick Strachan, Writer in Edinburgh, *against* The Magistrates and Town Council of Aberdeen.

No 154.
An execution of a decree *cognitionis causa*, wanted certain essential words. The execution found null; but not being challenged at the time, the adjudication following on it, was only restricted.

In the competition betwixt Mr Patrick Strachan and the Town of Aberdeen, for the mails and duties of the lands and fishing of Rutherstane, Mr Patrick founded on an infeftment granted to his father by Andrew Skeen of Rutherstane in *anno* 1674, and the Town claimed preference upon an expired adjudication.

Alleged for Mr Strachan; The Town's adjudication could not expire in prejudice of his right, being null and informally led, in so far as it proceeds upon a decreet *cognitionis causa*, against Christian and Margaret Skeens, as lawfully charged to enter heirs-portioners to their father and grandfather in the lands of Rutherstane, albeit they were never charged to enter heir. For the execution cites them, and their tutors and curators for their interest, 'to compear before the Lords of Council and Session at the day and place within contained,' which is only the style of a citation upon an ordinary summons: That, as it could not found a decreet of constitution, had no renunciation been produced, could not be the ground of a decreet *cognitionis causa*, bearing a renunciation to have been produced; a renunciation being mainly calculated to free the renouncer and his separate estate from his predecessor's debt.