

No 89. that it was never quarrelled till now, though three gifts have been expedite upon the same horning, and former donatars obtained full satisfaction and payment.

Replied ; As to the practise 1632, Fergushill being both the rebel's style and the name of his house, the execution bearing that he was charged there, was sustained, as being a compendious designation of both.

Duplied ; Castlemain's house went commonly under the name of that same title ; and so the defenders are in the precise terms of the practise 1632.

THE LORDS, waving the other points of debate, ' Found the duply relevant to sustain the execution, and assoilzied from the reduction.'

Harcarse, (HORNING.) No 515. p. 143.

1693. February 21.

GULMAN *against* WATSON.

No 90.
Found in conformity with
No 85. p.
3748.

THE LORDS assoilzied from the process of declarator of the escheat, and found the horning null, because it did not design the rebel's dwelling-house, whereby the mean of probation is cut off, albeit it designed her relict of Gulman in Monachie, and so her dwelling-house was to be presumed to be there. Durie observes the like, 14th July 1626, Adam, No 87. p. 3748., where a horning was found null for not designing the dwelling-house, though it called him burges of Ayr, and so he might be supposed to dwell in Ayr ; yet he might be an honorary burges : And, in an execution of a summons, a defender being designed by his style, it was found to supply the name of his house, because the Lords presumed he dwelt there.

Fol. Dic. v. 1. p. 263. Fountainball. v. 1. p. 563

S E C T. III.

Whether the Execution must bear the date of the Letters.

No 91.

1595. June 3.

L. of ARNCAPELL *against* L. of KILCREUCH.

A horning was executed against several debtors on different days. The execution was sustained, tho' it

THE Laird of Arncapeell pursued the Laird of Kilcreuch for contravention of an act of Lawburrows. Kilcreuch offered to compear. Arncapeell debarred him by horning. It was *alleged* by Kilcreuch, That the horning was null, because that upon the 20th, 21st, and 22d days of ———— respective he had charged such and such persons to underly the law within six days, which execution was

null, not designing what parties were charged; every particular of which allegiance, the LORDS repelled, and found the horning good enough, seeing the hail days contained in the execution were lawful, and there were six days free betwixt the day of the charge and the day of the denunciation.

Fol. Dic. v. 1. p. 264. Haddington, MS. No 547.

No 91.
did not mention on what day each person was charged.

1711. February 16.

Sir ROBERT FORBES and his FACTOR, *against* GEORGE WATSON, Merchant in Edinburgh.

In the competition for arrears due out of the equivalent, to several captains in Colonel George Hamilton's regiment of foot, betwixt Sir Robert Forbes, who, as donatar of the escheat of Alexander Forbes, merchant in Edinburgh, creditor by bond to these officers, had arrested their arrears in the hands of the commissioners of the equivalent; and George Watson, to whom the officers' bond was assigned by Alexander Forbes, and the assignation intimated to the officers, (they being out of the country) by letters of intimation executed at the market-cross of Edinburgh, pier and shore of Leith, before the donatar's arrestment,

Alleged for Sir Robert Forbes; He ought to be preferred to Mr Watson, though the latter's assignation was intimated before the other's arrestment; because the execution of the intimation was null, bearing for its warrant, 'conform to the within written letters of intimation of the assignation in favours of George Watson, merchant in Edinburgh, raised at his instance, and made to the said officers in Colonel George Hamilton's regiment;' but not mentioning the date of the letters, though the execution be upon a paper apart; and executions relating generally to the summons are not to be sustained, act 6. Parl. 2. sess. 3. Ch. II. in fin.

Answered for Mr Watson; Neither statute nor custom hath made it necessary for an execution of intimation to bear the date of its warrant. As to the act 1672, ordaining executions to bear the pursuer's and defender's designations, that is by practice restricted to the executions of summonses, and never extended to those of inhibitions, intimations, or other letters; and, as Sir George Mackenzie observes upon the act, though the Lords did not sustain an execution relating in general to the warrant; yet thereafter, upon helping the execution and the messenger's abiding by it, they allowed the same.

THE LORDS repelled the objection against the execution of intimation of Mr Watson's assignation, that it being on a paper apart, did not bear the date of the letters which are the warrant thereof. *See* No 11. p. 3687.—*See* This case by Bruce, *voce* INTIMATION.

Fol. Dic. v. 1. p. 264. Forbes, p. 500.

No 92.
An execution of letters of intimation of an assignation was sustained, tho' it was written on a paper apart, and did not mention the date of the letters of intimation.