

found it would, if his father, notwithstanding of the said apprising, continued in the possession of his lands to his death, and if the appriser never attained the possession in his lifetime; *sed de hoc multum dubito, nec æquitatem ejus capere possum*; but I think the Lords rather meant it should be a behaviour, if the apparent heir meddled before the establishing a right in his person.

*Advocates' MS. No. 213, folio 104.*

1671. *July 11.*

ANENT EXECUTION OF A SUMMONS.

A MESSENGER'S execution, bearing in the general that he charged the hail within-named persons in the summons, without condescending on their names, will not be sustained, unless he take up his execution, and mend it by inserting *specificè* the names and surnames of these he charged, and then abide at it.

*Advocates' MS. No. 214, folio 104.*

1671. *July 5 and 11.*

MACRAW *against* LORD MACDONALD.

*July 5.*—IN this action, ALLEGED, *Imo*, No process; because neither executed personally, nor at his dwelling house. ANSWERED,—Ought to be repelled; because, conform to a warrant and dispensation from the Lords, contained in the summons, he was cited at the market cross of Inverness, as the nearest burgh in the Lowlands, *ob non tutum accessum* that could be had to his dwelling place. REPLIED,—A warrant *non relevat* to sustain such a warning or citation, unless it proceeded on a bill given in to the hail Lords, who, *re cognita*, allowed of the same. (This is the thing the lawyers call *citatio edictalis*.) DUPLIED,—He could never be heard to question his citation, because the sole effect of citation being *ut pars citata certioretur*, it is offered to be proven it came to the defender's notice. Craigie was content to give them the Lords' answer upon this point, whether such warrants behoved to pass on special knowledge of the hail Lords, or if they were sustainable as passing in course.

The Lords found they would sustain them, as they have been used to pass of course in times bygone.

*2do*, ALLEGED,—The citation is not yet lawful, because it bears not a copy to have been left at the said market cross, which is a necessary solemnity, and being omitted vitiates the execution. ANSWERED,—The execution stood good notwithstanding of the said allegiance; because it bears he duly and lawfully charged him; which words, duly and lawfully, presuppose all the requisite formalities to have been used. They were to have the Lords' answer on this also.

The Lords found that they would sustain the execution, if so be the messenger will take it up and mend it by adding these words, that he left a copy of the charge at the said cross, and abide by it.

*Advocates' MS. No. 199, folio 101.*