

to publish the letters to the people, is by three cries with a loud and audible voice; for though the messenger should thrice say o-yes with a low voice, if that were known, it would annul the publication; and as the law requires six knocks to executions in absence, where the doors are close, that these within may hear to open, so it doth require three o-yesses to precede all public citations and intimations. The defender *answered*, That he opposes the executions, bearing, that the messenger made lawful publication of the letters of inhibition, which necessarily implies more than the reading of the letters, and so the premitting the o-yesses; and if need be, he offers to prove, that he made three o-yesses with a loud and audible voice immediately before the reading of the letters. *2do*, Though he had omitted three o-yesses, the public reading of the letters with an audible voice is sufficient, and the law doth not precisely require three o-yesses; for if the messenger had sounded a trumpet, or blown a horn, it would have made the people to flock to him better than three o-yesses; and there is no consequence from the six knocks, because there is a particular act of Parliament enjoining the same, but there is neither statute nor fixed custom for three o-yesses, seeing many public executions do not bear three o-yesses, but only making publication of the letters. It was *replied*, That albeit there be not a statute for three o-yesses at publications, yet there is a fixed custom so to do, and if they were expressed and improved, the executions would be rescinded as false; and albeit the executions of some messengers are so informal as not to express the same particularly, yet no messenger durst ever pretend that they were not truly given, and a fixed custom cannot be supplied by any equivalents.

THE LORDS having caused the clerk of register in a former case inspect the registers of hornings and inhibitions, what was the ordinary stile of the executions as to this point, who having reported, that the ordinary stile was three o-yesses, yet many bore only that the messenger made publication of the letters; therefore the LORDS did not simply annul these executions for not expressing the three o-yesses, but sustained the allegiance, that three o-yesses were truly given immediately before publishing of the letters, to be proved by the witnesses inserted in the executions. The contrary seems to be decided the 10th July 1676, *Stevenson contra Innes*, No 10. p. 12267.

Fol. Dic. v. 2. p. 213. Stair, v. 2. p. 876.

1684. February.

THREAPLAND against STRAGHAN.

AN execution of a warning to remove being challenged as disconform to act 75th, Parl. 1540, the defect was not allowed to be supplied by witnesses, that, *de facto*, a copy was affixed to the most patent door of the house.

No 14.

Fol. Dic. v. 2. p. 213. Harcourt.

* * * This case is No 99. p. 3730. *voce* EXECUTION.