

1705. December 20. SCRYMGEOR *against* BETSON.

No 222.

AN objection against an execution of an apprising served against a minor, that tutors and curators were not mentioned in the body of the execution, but interlined, was repelled, in respect it did appear by ocular inspection that the same was done *ex incontinenti*, and that all was done with the same hand and same ink.

Fol. Dic. v. 2. p. 153. Fountainhall.

*** This case is No 103. p. 3758, *voce* EXECUTION.

1709. February 4. SIR ALEXANDER CUMING *against* JOHN VERE KENNEDY.

No 223.
A gift under the Great Seal sustained, though some words were superinduced in the warrant, and others not material therein scored, in respect the superinduced words were, in effect, in the warrant in other words not superinduced, and the margin subscribed by the keeper of the Seal bore, that the scoring was by order of the Chancellor, and with consent of the donatar, who had most reason to quarrel it.

THE LORDS having found Sir Andrew Kennedy's deprivation upon malversations, had the same effect as his natural death, against his son John Vere Kennedy (see APPENDIX); he objected that Sir Alexander's gift was null, because the warrant was razed and vitiated in two places; these words 'past per Saltum' being superinduced, and a clause therein, Whereby her Majesty doth annul Sir Andrew and his son's right upon malversations scored, and the margin opposite thereto subscribed by the keeper of the Great Seal, bearing, that such lines were deleted by the Chancellor's order, with consent of Sir Alexander Cuming.

Alleged for Alexander Cuming; *imo*, Seeing the Queen doth not impugn Sir Alexander's gift, but on the contrary, hath authorised his pursuit by a letter, and given him a new gift ratifying the former, and dispensing with any nullities or informalities therein; it is *jus tertii* to Mr Kennedy to object, any pretended right he had being terminated and out of doors by the decret of reduction against his father; *2do*, *Et separatim*, superinducing the words *per Saltum* is an objection of no moment; seeing, *imo*, The equivalent words are there not superinduced, viz. without passing any other seal or register; *2do*, The words deleted in the warrant being not material, and in Sir Alexander Cuming's favour, and the docquet, which is an epitome of the gift, being full and entire, the Chancellor (who is Judge of what might be superfluous) might warrantably score the same: For, in countries where the Chancellor is remote from the Sovereign, he (as the Exchequer doth with writs directed to them) may lawfully score what is superfluous, and not in the common stile, without reporting the matter to the Sovereign. It was ordinary for the Exchequer to strike out even substantial parts of signatures, when quarrelled by third parties having interest; and when the Queen trusts the Chancellor (in place of the Exchequer) with the sole power of expediting the signature *per Saltum*, he has the same discretionary judgment they would have had for that effect; yea, the etymology of the word, from *cancellare*, imports as much.