

bited and discharged in manner within-written, to the effect and for the reasons and causes within specified, &c. The same are sufficiently formal according to the custom of that time, And the lieges are sufficiently certiorated by the messenger's execution relative to the letters bearing all the prohibitory clauses, and by a copy of the letters affixed to the cross, and inserted in the register. Besides, not only executions of inhibitions and charges of horning are thus relative to the letters, as the warrant, which are registered; but also the executions of all other summonses not in use to be registered are so conceived.

No 81.

THE LORDS having after trial found the stile of many executions of inhibition about the time of these quarrelled to run in the same strain, they repelled the nullities, and sustained the inhibitions; because the sustaining such grounds of nullity might open a door to question many diligences, and the registration ascertained the parties, so as one could not be mistaken for another.

Forbes, p. 99.

1713. July 8.

ANDREW BAILLIE of Parbroath *against* ROBERT NISBET of Greenholm, and ARCHIBALD NISBET of Carfin.

IN a reduction *ex capite inhibitionis*, at the instance of Andrew Baillie against Robert and Archibald Nisbets, the defenders objected three nullities against the execution of the inhibition, viz. *1mo*, It doth not design the party at whose instance the inhibition was used, nor the party against whom, otherways than by a general relation to the letters, contrary to the act of Parliament 1672, which, though it mention only executions of summons, includes also executions of inhibitions, horning, and the like; summons and letters being terms of promiscuous use in our law, as is clear from act 45th Parl. 5th James V., and the act 40th Parl. 1695, act 32d Parl. 1469, act 74th Parl. 1540. *2do*, The execution doth not bear delivery of a subscribed copy to the party, which is a necessary solemnity by act 141st Parl. 12th James VI.; for when an execution doth not bear, that the formality required by law was used, it is presumed against it, that such a formality was omitted. *3tio*, The execution doth not bear, that there were any witnesses to leaving of the copy, but only to its affixing.

No 82.
Execution of an inhibition was sustained, though it did not design the parties otherways than by relation to the letters.

Answered for the pursuer; *1mo*, The act 1672 relates only to summons, the commencement and continuation of processes before the Lords of Session to different diets of compareance to pursuers and defenders, &c. Now, there are no such terms used with respect to inhibition, which is a complete security by the execution and publication, and cannot be regulated by the statute aforesaid. *2do*, Law doth indeed require, that copies of summonses and letters delivered to parties, be signed by the executor, but not that the execution expressly bear, that the copy delivered was signed. *3tio*, If the messenger after narration of his having left and affixed a copy, and used the other particular solemnities, had said no more but 'before these witnesses, &c.' and the witnesses had subscribed the execution, it had been certainly good. Now, his

No 82. saying ' witness to the affixing,' can never wrong the execution, which had been good without it : more than it could be quarrelled as null for not bearing, ' That they were witnesses to the open and public reading and crying of the ' oyeses,' which are likewise said to be done in the execution.

THE LORDS repelled the nullities, and sustained the execution.

Fol. Dic. v. 1. p. 263. Forbes, p. 697.

1750. November 29. JEAN DONALDSON *against* DONALDSON.

No 83.

It is only where the parties are so connected in the action, that it cannot proceed in the absence of any one of them, that the execution must contain the names of all the defenders.

THOMAS DONALDSON now of Kinnardy, and others, being called by the said Jean in the exhibition of a tailzie of the estate of Kinnardy, said to have been made by William the elder brother of the said Thomas, the Ordinary sustained the no-process objected for Kinnardy, that the execution against him did not contain the names of the other defenders.

The pursuer reclaimed ; and the Ordinary, upon hearing the opinion of his brethren, being satisfied that the objection ought to have been repelled, the petition was remitted to the Ordinary.

The act 1672 requires, that the execution should contain the names and designations of all the defenders ; and where parties, pursuers or defenders, are so connected that the process cannot proceed if any one of them are wanting, as for example, in reductions of elections in burghs, it has been found a nullity in the execution, that any of the parties' names were omitted to be expressed in it : But that in every case, where more parties are called in one summons, the execution should be void for not bearing the names and designations of all the parties, has no foundation in the statute, in practice, or the reason of the thing, which in no case can be more apparent than in that of a common exhibition. Nay, the said construction put upon the statute in the reduction of an election may even be thought to have gone far enough, as the intent of the statute seems to have been no other than to require that the names of pursuers and defenders should be exprest in executions, and not related generally, as they used formerly to bear only ' the persons within written ;' which might be thought sufficiently answered by two different executions, one containing one part of the defenders, and another containing another part of them, each expressing their names and designations.

Kilkerran, (EXECUTION.) No 2. p. 169.

1755. February 20.

SIR WILLIAM DUNBAR, and Others, *against* JOHN M'LEOD younger of M'Leod, and Others.

No 84.

Where an execution is written on the back of

A DOUBLE election of Magistrates and Councillors in the burgh of Forres, occasioned a process at the instance of the one set, headed by Sir William Dunbar