

THE LORDS preferred Mr Innes, in respect the last iustament was not produced till after the first was registered, and an interlocutor in the action founded upon it.

No 23.

Fol. Dic. v. 1. p. 553. Forbes, p. 674.

1744. July 7.

CHRISTIAN BEG against THOMAS RIG of Morton.

THE pursuer having brought a process against the defender, the summons was called in the Outer-house the 9th June 1743, and given out on the 12th, with an execution subscribed by a messenger, but not by any witnesses; and, upon the 20th, was returned with defences written upon the back of the execution, objecting the nullity thereof, as wanting witnesses, in terms of the act 1686, which declares such executions void and null, and are not suppliable *ex post facto*, by the act 1681. This process was enrolled the 30th June, upon the said return; and being called before the Ordinary, and the same defence insisted on, the pursuer produced a new execution, signed both by a messenger and witnesses, with an instrument of protest, four days after the return, offering the process to be given out a second time, with the new execution, which was refused to be taken out, in regard signed defences were made to the first outgiving.

Upon this debate the LORD ORDINARY repelled the defences, and the LORDS adhered.

C. Home, No 271. p. 441.

No 24.
If an execution is objected to as null, it can be supplied by producing another after the process is called, given out, and defences returned.

1748. July 15.

A. against B.

ON a verbal report, it was by the LORDS given as a general rule, that a messenger may be allowed to amend his execution, where nothing inconsistent with what the execution produced bears is proposed to be added; but that he could not be allowed to give a new execution bearing any thing inconsistent with the former produced.

No 25.

Kilkerran; (EXECUTION.) No 1. p. 169.

1752. February 28.

A. against B.

THIS day an Ordinary verbally reported this point, whether where an execution of removing bore two witnesses to the executing at the church-door, the messenger could be allowed, after improbation was proponed, to amend his execution, by adding other two witnesses to his execution.

No 26.

THE LORDS were of opinion he could not.