

THE LORDS refused the said desire, in respect the said minute was neither subscribed by the notary nor in his protocol.

And that requisition and such *actus legitimi* cannot be proved but by instruments perfected as to all necessary solemnities, at least the minutes of the same under the notary's hand. And though the debtors or party concerned may know such deeds were done *de facto*, they may be ignorant, and are not obliged to declare, whether they were legally done or not.

Act. Lockhart. Alt. Spottiswood.

Fol. Dic. v. 2. p. 212. Dirleton, No 102. p. 40.

No 8.
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1671. July 28.

KEITH against JOHNSTON.

AN inhibition being null, the execution not bearing delivery of a copy, the LORDS, after registration of the inhibition, would not admit this to be supplied by a proof, that a copy was truly delivered, in prejudice of a singular successor, who purchased upon the faith that the execution was null.

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

* * * This case is No 143. p. 3786. voce EXECUTION.

1676. July 10.

STEVENSON against INNES.

THE LORDS found, That executions of inhibitions, as well as hornings at the market-cross, must bear the particular solemnities of three several o-yesses and public readings, and cannot be supplied by witnesses, although the execution bear in general to be lawfully executed.

Fol. Dic. v. 2. p. 213. Gosford. Stair.

* * * This case is No 145. p. 3788. voce EXECUTION.

1680. November 12. BROWN against WILSON.

BROWN having pursued Thomas Wilson upon this ground, that he had assigned to Wilson a debt due by the Countess of Winton in trust, by which he was obliged to do diligence, and did it not till the Countess was dead, being a liferenter, having neither heir nor executor; the defender *alleged*, That this cause being called in February last, the libel was referred to the defender's oath, who deponed, that he had received that assignation for obtaining satisfaction to himself of a debt due by the cedent, but upon express terms in words, that he should be obliged for no diligence, but take the money if he got it, whereupon he was assoilzied by the Ordinary, but the clerk forgot to minute

No 11.
Minutes of
process can-
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up *ex inter-
vallo* by the
oaths of the
advocates up-
on the other
side, nor by
oaths of the
clerks and
judges.

No 11. his oath, or the absolvitor thereon; the verity whereof he referred to the pursuer's advocate's oath. It was *answered*, That judicial processes cannot *ex intervallo* be made up by clerks, either upon their own memory, or the advocates', or even the Judges, but must be minuted *ex incontinenti*, albeit once minuted and lost, the tenor of it might be proved; otherwise the lieges would be in great insecurity.

THE LORDS found, That the minute never having been written, could not *ex intervallo* be made up by the oath of the advocate, against whom the minute was alleged, and the like as to the clerk or Judge; for there was a reduction at one Buchannan's instance, against Lieutenant Colonel Osburn, of a decret of the English Commissioners, bearing, His compearing and consenting to a determination upon a judicial submission to these Commissioners, which was not minuted when done but some months thereafter, which therefore was reduced by the LORDS.

Fol. Dic. v. 2. p. 212. Stair, v. 2. p. 796.

1680. November 19. HAY against LORD BALLEGERNO.

No 12. EXECUTION of an inhibition, bearing to be at the dwelling-house, and not mentioning six knocks, but only several knocks, was not allowed, after registration, to be supplied by a proof that six knocks were actually given; for if one defect may be supplied by witnesses, every defect may be so supplied, and so it would come out, that solemn instruments are not requisite for vouching *actus legitimi*, but that the same may be proved *prout de jure*, like any ordinary fact.

Fol. Dic. v. 2. p. 213. Stair. Fountainhall.

* * * This case is No 146. p. 3790., *voce* EXECUTION; and No 28. p. 6960. *voce* INHIBITION.

No 13.
The executions of an inhibition sustained, tho' not bearing three o-yesses, but only lawful publication, it being offered to be proved by the witnesses, that three o-yesses were made.

1681. June 21. LUNDIE against TROTTER.

MR JAMES LUNDIE pursues reduction of an inhibition at the instance of Alexander Trotter, upon this reason, that the execution at the market-cross doth not bear, that the messenger, before reading of the letters of inhibition, did make three o-yesses, which are necessary in all citations and intimations at market-crosses, the design whereof being to publish to the lieges, that they may know, and that it may by common fame be carried to all parties having interest, which cannot be done by reading of the letters, which the messenger might do clandestinely; and though he did affix a copy, yet the user of the inhibition might cause any person take it immediately down, and yet the messenger might say that he left a copy affixed, because, when he began to leave the cross, the copy was up, and immediately taken down, and therefore, the only secure way