

as having consented for her liferent right, pursues declarator that Mr James hath contravened the clause of the contract, and thereby omitted his right. He *alleges* no process, because by the late act of Parliament 1672, anent second summons, it is statute, that all executions shall bear expressly the names and designations of both parties, otherwise they shall be null; but this execution bears no designation of Mr James Alexander. It was *answered*, that *constat de persona*, that the execution bears Mr James Alexander and Rachel Aiton within written, wherein their designations are exprest, and that act had only its rise for summonses of interruption, where the executions were not written upon the back of the summons, and so might be applied to divers summonses, and therefore such executions as this have never been quarrelled since the said act of Parliament.

THE LORDS sustained the defence, and found the executions null.

*Stair, v. 2. p. 806.*

1687. February.

WALLACE against MAXWELL.

IN an action of adjudication for the fines at the instance of Hugh Wallace his Majesty's cash-keeper, against Sir John Maxwell, it being *alleged* that the execution of the summons was null, in respect Hugh Wallace the pursuer was not designed to be cash-keeper, but it did only contain his name, without any designation, which is declared to be a nullity by the 6th act, Parliament 3, Cha. II.; as also it being *alleged* against another execution, that it was not stamped, as is required by the 74th act, Parliament 6, James V. the LORDS sustained both these dilatory defences, and found the executions null.

*Fol. Dic. v. 1. p. 263. Sir Patrick Home, MS. v. 2. No 899.*

1706. February 14.

THE EARL of LEVEN against NICOLSON of Trabrown and DURHAM of Largo.

THEY being all creditors to Young of Kirkton, and competing, Leven craved preference, though posterior, because first clad with possession; the other repeated a reduction *ex capite inhibitionis*. He *objected* against the inhibition, that it was null, defective, and informal, in so far as the execution designed neither the party inhibitor nor inhibited, which, if it had been on the back of the letters, had been the more tolerable, but is on a paper apart; and the calling them only 'the within designed,' is applicable to any other persons of that name, or any other paper as well as this. *2do*, It wants this solemnity, that the messenger made public proclamation; the design of the law being, that it should be done with such an audible voice, as may come to the ears of all by-

No 79.

summons found null because they did not design the defenders.

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An execution was found null, because it did not bear the designation of the pursuer.

No 81.

An execution of an inhibition written on a paper apart, and which did not design the parties, was sustained, it having been made before the act of Parliament 1672, chap. 6.