

1706. January 15. AGNES LOCH against SIR PATRICK HOME.

IN a competition for the mails and duties of some lands in Preston and Bunckle, betwixt Agnes Loch, relict of Mr John Colvil, and Sir Patrick Home, advocate ; it was *alleged* against Sir Patrick's apprising, derived from one Elisabeth Arthur, That it was null, because the decret of apprising, narrating the messenger's executions, did not bear that the copies and schedules left on the ground, and delivered to the parties, were subscribed, as the 141st act 1592 appoints.—*Answered*, It is true that law requires these schedules to be signed by the messenger, but no law appoints him to express his having done so in the execution ; and how many diligences would this annul, not only of apprisings, but of hornings, inhibitions, and arrestments, which only used to bear a copy left or delivered, but did not mention whether subscribed or not ? If the schedule were produced, and found to be unsigned, something might be said ; but *in dubio omnia præsumuntur solemniter acta*.—THE LORDS did not find this a nullity.—*2do*, It was *objected*, That these apprisings were informal and irregular, there being three debtors, the Lord Mordington, Douglas of Lumsden, and John Colvil, all in one bond, and yet there are three several decreets of apprising extracted separately against every one of their lands apart, as if it were three several debts, and not all one.—*Answered*, What hinders a creditor to insist against one, and not against another, or to take out three several decreets against three sundry debtors in one bond, even as now, by the late regulations in 1695, creditors competing in a ranking may take out a decret for themselves, without inserting the compearances, debate, and interlocutors concerning the other creditors.—THE LORDS ordained the Ordinary to try if there were three several claims given in to the messenger, and three sentences pronounced thereon ; in which case, the clerk to the apprising might divide them into three several decreets of apprising, otherwise it would be unwarrantable.

Fol. Dic. v. 1. p. 264. Fountainball, v. 2. p. 311.

* * * The like was decided 8th July 1713, Baillie against Nisbets,
Div. 4. Sect. 1. b. t. No 82. p. 3745.

1700. June 30.

EARL OF GALLOWAY against MR BASIL HAMILTON of Baldoon, and LADY MARY HAMILTON his Mother.

IN the reduction and improbation at the Earl of Galloway's instance, against Mr Basil Hamilton and Lady Mary Hamilton his mother, the LORDS found no process against the Lady, in respect the execution bore only that the deceast Lord Basil Hamilton, her husband, was personally cited at Edinburgh, and that she was cited by delivering a copy to him for himself, and in name of his Lady,

No 104.

It is not necessary to mention in an execution, that the copy delivered was signed.

No 105.

Found in conformity with No 102. p. 3757. in the execution of a summons.

No 105.

who was then at Hamilton ; which the LORDS found did not import a legal citation of the Lady, who ought to have been cited by giving a copy to herself personally, or leaving a copy at their dwelling-house, in the terms of the act of Parliament ; albeit it was *alleged* for the pursuer, That delivering a copy to the husband, who was curator in law to his Lady, was equivalent to the giving a copy to herself, and a better certioration than if a copy had been left with any servant in the house ; for the LORDS were of opinion, that a copy given to any curator in name of the minor, is null.

Fol. Dic. v. 1. p. 265. Forbes, p. 337.

1710. June 23. LORD GRAY *against* SIR WILLIAM HOPE.

No 106.

An execution of an inhibition bore, that the messenger affixed a copy to the market cross, but wanted these words, " I left a copy." The Lords refused to reduce the execution on this account, unless the pursuer would allege that the copy was fraudulently taken down.

IN the reduction *ex capite inhibitionis* (between these parties), the LORDS repelled the nullity that it was not executed at the Canongate, the head burgh of the regality where the lands lay. Sir William now objects a second nullity, viz. That by the 5th act of Parliament 1681, all executions of inhibitions must design the witnesses in the body of the writ, or instrument, otherwise the same are void, null, and make no faith ; but so it is, the witnesses are not named or designed in the body of this execution, but in a marginal note adjected by the messenger himself. It is true, the law does not reprobate all such marginal adjections, but it requires that the writ bear the witnesses were adhibited not only to the body of the writ, but likewise to the marginal note, which is not expressed in this execution, and so it is evidently null ; otherwise messengers might adject these marginal notes *ex post facto*, which the witnesses neither saw nor knew of, which would entirely evacuate the design of the act of Parliament, which is farther confirmed by the 175th act 1593, and 4th act 1686. *Answered*, This nullity is more weak, trifling, and frivolous than the former, neither supported by the words, meaning, nor reason of the law, which was introduced to correct a corrupt custom that witnesses insert proved without subscribing ; therefore, to rectify this, the act ordains the witnesses to subscribe, which is fully obeyed in this execution ; and the body of the writ is not in contradiction to the inserting of marginal notes, but that it be within the context of the writ, and not in a condescendence apart ; so that the margins, in legal sense, are as much in the body of the writ as any part thereof ; and to do otherwise, were to unsecure the lieges, the most part of executions being offered to the register with marginal notes, and never refused ; and that the writ should bear, they are witnesses to the marginal note, as well as to the body of the writ, that may indeed hold in probative consensual writs, such as bonds, contracts, discharges, &c. but was never required in messengers' executions, where the witnesses are only called to attest the fact done by the messenger, that they heard