

accession *in toto*. See Young against Hay, No 195. p. 6766. Some of the LORDS thought this severe, where the writ had been produced several years in processes in their father's time, and never then quarrelled. But in regard this defender Nisbet was minor, and had neglected to take out her diligence for proving her articles of approbation, they did prorogate the term to her for executing the incident formerly granted. No 198.

*Fol. Dic. v. 1. p. 455. Fountainball, v. 2. p. 83.*

1703. December 10.

RAE against BLACKWOOD.

SIR GEORGE WEIR of Blackwood being creditor to Corse in Glasgow, he arrests in the hands of John Graham and nine other persons supposed debtors to Corse; and after a long competition among the arresters, Sir George's diligence is preferred to them all, in so far as concerns the sum in Graham's hand. Then compearance is made for Bailie Rae in Glasgow, a co-creditor; and he propones improbation of Blackwood's execution of arrestment, and offers to consign, *urging* Blackwood may simply abide by the verity of the messenger's execution, containing nine or ten several persons, in whose hands he had laid on arrestments at Blackwood's instance. It was *answered* for Sir George, That though they were all contained in one execution, yet he made use of it for no other end but to reach and affect the sum in Graham's hand; and, in so far as concerned him, he was willing instantly to abide by the verity of the execution *sub periculo falsi* (though he was not bound to warrant messenger's deeds, whom he never saw nor knew,) but *quoad* the rest he was not insisting against them; and when he did so, it was time for Bailie Rae to urge him to abide at the truth thereof. *Replied*, That employers of messengers, and users of their executions, were as well obliged to abide simply as the messenger executor himself was; and it is not enough to abide with this quality, that it was truly so delivered to him; but here the whole ten being all in one context of an execution, if it was false *quoad* some of them, it must fall *quoad* Graham and all the rest, seeing such a judicial executive act cannot divide, even as a retour erroneous in one of the heads of the brieve falls as null *in toto*; and one of the witnesses here, called Millar, is known to have been accessory to sundry the like forgeries before, and has been convicted thereof. *Duplied*, Though the messenger, to hold in his pains of transcribing many copies, has put all the ten in one paper, yet the one has no manner of dependence upon the other; and *esto quoad* some of them the execution were false, yet that can never falsify or annul those that were truly done; and the arrestment is the same as if there had been as many separate and distinct executions, as there were different persons in whose hands the arrestments were used; in which case, it would be ridiculous to pretend, that because one of them is false, therefore those attested and asserted by the messenger in other executions are false too; and though Sir George has no ground to doubt the veracity of the whole, yet he is not obliged in this case to put ei-

No 199.

An arrestment was laid against ten persons, and all the executions put on one paper. The execution was used against only one of them, who challenged it. Found, that the user need only abide by with regard to that one execution.

No 199. ther his honour, life, or estate, upon a messenger's deed, at which he was not present. THE LORDS, on Rankeilor's report, found Sir George not liable to abide by the execution any farther than he had made use of it, which was only against Graham; without prejudice of their forcing him to abide by its verity, *simpliciter*, when he insisted against the rest contained in that execution.

*Fol. Dic. v. 1. p. 454. Fountainball, v. 2. p. 198.*

1706. February 1.

No 200.

SIR WILLIAM MAXWELL of Monreith *against* GEORGE IRVINE of Stank.

IN an action at the instance of Sir William Maxwell against Irvine of Stank, the pursuer having offered to improve a discharge produced by the defender; the LORDS ordained the defender to abide by the same *simpliciter*, and would not allow him to adject to his abiding by, this quality, that he abides by the discharge as a true writ and deed except as to the designation of the writer.

*Fol. Dic. v. 1. p. 454. Forbes, p. 89.*

1708. June 25.

No 201.

In a competition, between adjudgers for mails and duties, the one suffered the term for improving a discharge to be circumduced against the other. The common debtor, notwithstanding, found entitled to appear and abide by it.

WILLIAM COUPLAND of Collistoun *against* WILLIAM CARRUTHERS Chirurgion.

IN a competition for the mails and duties of Brakenwhat, betwixt William Coupland and William Carruthers adjudgers thereof, the latter craved preference upon this ground, That the debt for which Coupland had adjudged was satisfied in whole or in part, before the leading of his adjudication. Carruthers, for proving thereof, recovered by a diligence a discharge of the debt, which Coupland offered to improve, and Carruthers was ordained to abide by *sub periculo falsi*; after Carruthers had suffered the term to be circumduced against him, for not abiding by, the LORDS admitted James Carlyle of Brakenwhat compearing for his interest, and proponing payment upon the discharge, to abide by the verity thereof, and ordained Coupland to consign his L. 40, in respect no collusion betwixt Carruthers and Coupland could prejudice or debar James Carlyle from extinguishing his creditor's debt, and abiding by the verity of the instruction thereof; albeit it was *alleged* for Coupland, That in all improbations the user of the writ must abide by it, June 16. 1675, Lady Logie *contra* Meldrum, No 179. p. 6756., since otherwise the effect of an improbation might easily be elided by shifting suspected writs from hand to hand; besides, James Carlyle is an insolvent person.

*Fol. Dic. v. 1. p. 455. Forbes, p. 255.*

1712. November 21.

No 202.

Defenders in an action having pro-

COLIN MACKENZIE of Rosend *against* The INHABITANTS of BURNTISLAND.

IN the action of abstracted multures at the instance of Colin Mackenzie and his authors, against the Inhabitants of Burntisland, the defenders having proponed improbation, against the execution of the summons, and consigned L. 40,