

No 102. elsewhere, it could not supply the defect of an execution against the wife who had the principal interest, the husband being only *pro interesse*; therefore, upon this informality, they reduced the inhibition as null *quoad* the wife, though the copy bore to have been given to the husband, both for himself and his wife.

Fol. Dic. v. 1. p. 265. Fountainball, v. 2. p. 154.

1705. Decdember 20. SCRIMZEOUR against BEATSON.

No 103.
Execution of
apprising was
sustained,
though it
did not bear
a schedule
to be left on
the lands.

IN a reduction of a comprising, pursued by Mr Harry Scrimzeour *contra* Beatson of Kilry, the following nullities were proponed against the executions; *imo*, That they were null, because they did not bear that a schedule was left on the ground of the lands.—*Answered*, That in the beginning of the execution, it bore that copies and schedules were affixed and left at all places needful; which generality being applied to all the subsequent condescendence in the execution, is sufficient to support it, though it be not mentioned in every particular, nor repeated. *2do*, The execution was still null, because, by the 75th act, Parliament 1540, it is expressly required, that messengers executions bear, that they could not get entrance, and therefore gave six several knocks.—*Answered*, This point is in desuetude, and not in use to be expressed now in executions; but the knocking presumes and implies that the door was shut, and so he could not get entrance.—*3tio*, *Alleged*, All executions of apprising should bear three several oyeses at the market cross, whereas this bears only several oyeses without the word *three*; and for the want of this solemnity, the Lords found an execution of an inhibition and a summons null, 15th February 1681, Gordon *contra* Forbes, No 116. p. 3768.—*Answered*, ‘Several oyeses’ was the equipollent, and could not in common sense be interpreted of fewer than three.—*4to*, *Alleged*, This execution was further null, the debtor being minor, and his tutors and curators are only interlined, and not in the body of the execution,—*Answered*, This has been done *ex incontinenti*, and not *ex intervallo*; because it is evident by ocular inspection, that it is done all with one hand and the same ink, and they are expressly mentioned in the decret of apprising, which proves it has been insert before it was extended, and the executions are narrated there.—THE LORDS repelled all these four nullities, in respect of the answers, and sustained the executions of the apprising as both legal and formal. Some proposed to cause search the registers, and see how the generality of such executions run, that the stile might be known; but the LORDS thought there was no necessity for such an inquiry.

Fol. Dic. v. 1. p. 265. Fountainball, v. 2. p. 301.