

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.