

EXECUTION.

DIVISION I.

Warrant of Execution.

1604. *March.* MONCUR *against* L. of CRAIG.

IN an action of spulzie, pursued by Moncur against the Laird of Craig, THE LORDS found an inhibition null, because the tack bore that the lands lay within the parish of Caterlin, and the inhibition was served at the kirk of Kethouse, albeit the pursuit offered to prove that the kirk of Caterlin was ruinous, and no service thereat, and the people of both the parishes were in use to resort to the preaching and sacraments at the kirk of Kethouse.

Fol. Dic. v. 1. p. 258. Haddington, MS. No 715.

No 1.
An inhibition was found null, because it was served at another church than the church designed in the body of the letters, although that church was ruinous, and the congregation went to the one at which the inhibition was served.

1627. *January 24.* ROBERT ERSKINE *against* The L. of ERSKINE.

THE LORDS found an inhibition null used against Sir James Erskine personally, because the letters bore warrant to inhibit only upon sixty days warning at the market-cross of Edinburgh, pier and shore of Leith, and market-cross of Stirling upon sixty days warning.

This same found and more, 19th March 1628, Lamb *contra* Blackburn. See Div. 4. Sect. 1. *b. t.* See No 4. p. 3683.

Fol. Dic. v. 1. p. 258. Kerse, MS. fol. 61.

No 2.

No 2.

* * Durie reports the same case.

In an action of reduction at the instance of Erskine against the Lord Erskine, founded upon a reason of inhibition, THE LORDS found the inhibition null, because the command and warrant of the letters of inhibition gave power to charge the party, being then out of the country, upon sixty days, at the pier and shore of Leith, and at the market-cross of Stirling, being the head burgh of the sheriffdom where the party to be inhibited his lands lay ; but the saids letters had no further power, nor warrant therein contained, albeit the execution upon these letters, now used against the party exhibited, bore personally apprehended within the Cannongate, for doing whereof there was no warrant in the letters, so that the execution wanting a warrant of the letters, was not sustained ; and the LORDS repelled the allegiance proponed by the pursuer, to sustain the execution, *alleging*, that seeing the whole lieges were lawfully inhibited, as was necessary of the law, and that the execution against the party was only used to intimate the inhibition to him, the same was more clearly intimate by an execution made personally, than by any which had been made as against one out of the country ; and so that he having done not only equivalent to the command of the letters, but more nor was therein prescribed, his execution should be found lawful ; which was repelled as said is ; for the LORDS found, that he ought to have craved a command to do the same ; for albeit he might lawfully done the same, if he had sought it, and could not been refused ; yet not having sought the samen, he could not do it of himself without a warrant.

Act. *Cunninghame.*Alt. *Hope, Nicolson, & Aiton.*Clerk, *Hay.**Durie, p. 262.*

No 3.

A personal citation on six days, upon a summons which authorised edictal citation only, was sustained.

1628. February 2. L. KIRKCONNEL against L. BARNBARROCH.

IN a declarator of escheat by the L. Kirkconnel against the L. Barnbarroch, the summons being execute upon six days against the party defender personally apprehended, where the warrant and command of the letters did bear a desire, to summon him upon sixty days, as being out of the country, and no further anent the citation of the party, being contained in the will and desire of the summons ; and the defender *alleging* the execution to be null, seeing there was no warrant in the summons to cite and summon the party after that manner, and the same could not be done by any person at their own hand without a warrant ; this allegiance was repelled, and the citation was sustained. But this is disconform to the decision betwixt the L. Erskine *contra* Erskine, No 2.