

S E C T. IV.

Execution by leaving a Copy.

1627. July 20. MONTEITH *against* KIRKWOOD.

No 93.

HORNING found null, which buir delivery of a ticket bearing the tenor and substance of the letters, because it buir not this word, 'copy.'

Fol. Dic. v. I. p. 264. Kerse, MS. fol. 240.

1628. November 19. RAE *against* DOUGLAS.

No 94.

A charge given to two Bailies of a Regality, to take a rebel then present with them, was sustained, though the execution bore, 'that one copy was delivered to one of the Bailies for himself and for the other Bailie, they being both present together.'

IN this process, charges being executed by a creditor against two Bailies deputies of a regality, which being suspended by one, upon this reason, That the charge and execution bore not, that a copy was delivered to him that suspended, this reason was not sustained, because the execution bore, 'That both the Bailies were standing together, and the rebel in their company with them then, when charged personally to take the rebel at the creditor's instance, and that a copy was delivered to one of the Bailies for himself, and for the other Bailie, they being then both present together;' which execution was found sufficient, albeit a copy was not delivered to each of them; and the letters were found orderly proceeded against both, they being conjunct in the office, and being both present together.

THIS same day, in this same process, betwixt the same parties, a charge given to the Bailies to take the rebel, execute upon a Sunday, was not sustained, and the Magistrate found needed not to obey that charge; but because it was *replied* by the charger, That the rebel was thereafter upon other lawful days since the day of that charge, in the company of the Bailies now charged, within some part of his jurisdiction, and which was referred to the Bailies' oath, this reply was sustained to fortify the said charge; which, although it was not of that force, being execute upon a Sunday, that might compel the Bailies to give obedience on that day, yet that was found sufficient to make him liable in law; for his accompanying with the rebel thereafter, within his jurisdiction, and then not doing his duty to take him, which was admitted, being referred to his oath; and the LORDS declared, if he should depone and declare by his said oath, that at that time he accompanied with the rebel, he had not power then to take him,

as if he had been better horsed, or more people with him, or that being in the fields the Bailie was alone, or such like other considerable circumstances, that the LORDS would, at the advising of the cause and oath, have regard thereto, and consider if the defender had probability of excuse for not taking the rebel.

No 94.

Act. Belsbes.

Alt. ———.

Clerk, Scot.

Fol. Dic. v. 1. p. 265. Durie, p. 397.

1670. February 12. NAPIER against GORDON of Grange.

JOHN NAPIER, as representing his father, did pursue William Gordon of Grange, as representing Hugh his father, for payment of 2000 merks, due by the said umquhile Hugh's bond; and upon the said William's renouncing to be heir, obtained adjudication of the lands of Grange and others, in so far as might belong to the said umquhile Hugh's debtor's heirs, and thereupon did pursue the tenants for mails and duties; in which action, it was *alleged* for William Gordon, now of Grange, That he stands infest by a disposition from the said umquhile Hugh Gordon of Grange, his father, for onerous causes and sums of money undertaken, and paid for his father, which was found relevant; and to evite the same, the said John Napier raised reduction of Grange's right, granted by his father, *ex capite inhibitionis*, raised against his father upon the said bond, before the disposition made to this Grange; which inhibition being produced this day fortnight, it was *alleged* for Grange that the same was null, because the executions bore not a copy to have been left at the market cross, at the publication of the inhibition, which the LORDS found relevant; and now the pursuer *insisted* on this reason, That the disposition, though it bore onerous causes, yet being after the contracting of his debt, by a father to a son, the narrative bearing the cause thereof, is not probative against a third party, but the same must yet be instructed.

No 95.
An inhibition found null, because the executions of it bore not that a copy was left at the market cross.

Which the LORDS sustained, and ordained Grange to produce the instructions thereof. See PROOF.

Fol. Dic. v. 1. p. 265. Stair, v. 1. p. 671.

1674. February 11. M'CULLOCH against GORDON.

No 96.

A CHARGE of horning being given at the debtor's dwelling-house, he not being personally apprehended, it was found a nullity, that the messenger or witnesses did take away the copy of the charge to conceal it from the debtor, without necessity to allege that they were instructed so to do.

Fol. Dic. v. 1. p. 265. Stair.

*** See This case, No 29. p. 3701.