nor in the purview of that enactment. And, besides the adjudications introduced by the statute 1672, instead of apprisings, there were others formerly known, which have been always attended with the same consequences. As to the supposed neglect of the pursuers, in not using an inhibition, the observation seems entirely groundless: For, not to mention that this form of diligence is not properly applicable to declaratory actions, such as the one giving rise to the present dispute, it is evident, that, in this way, the doctrine of litigiosity might, with regard to land rights, be altogether laid aside. No 11.

"THE LORD ORDINARY sustained the defences."

After advising a reclaiming petition, with answers, the Court altered the judgment of the Lord Ordinary.

A petition was afterwards preferred for the defender, which was followed with answers.

THE LORDS ordered a hearing on the general point; after which they altered their interlocutor; thus returning to the judgment pronounced by the Lord Ordinary.

A reclaiming petition was preferred for the pursuers, which was refused.

Lord Ordinary, *Hailes*. Act. *Lord Advocate, C. Hay, Maconochie.*
Alt. *Blair, Geo. Fergusson, W. M. Bannatyne.* Clerk, *Robertson.*

C. *Fol. Dic. v. 3. p. 392. Fac. Col. No 331. p. 507.*

SECT. II.

Can Executions be Amended after being produced in Process?—Executions of Legal Diligence after Registration.

1667. *January 25.* EARL of ARGYLE *against* GEORGE CAMPBELL.

No 12.
Execution allowed to be amended at the bar, the pursuer abiding by it.

THE Earl of Argyle insisting in the removing against George Campbell, it was *alleged* no removing, because the warning was null, not bearing to have been read at the kirk door, either at the time divine service uses to be, or at least before noon.—It was *answered*, That the warning bore that the same was affixed on the kirk door, and lawfully intimated there, which does import the lawful time of the day. 2*dly*, The pursuer offered to mend the execution at the bar, and abide by it as so done.—It was *answered*, That the defender accepted the executions, as produced, after which they could not be amended, and that lawfully could not supply that speciality; otherwise, if the warning had only borne that the officer had warned the party lawfully, it would have been enough.

No 12. THE LORDS admitted the pursuer to amend the execution, he biding thereby, and ordained the defender to see the same.

Fol. Dic. v. 1. *p.* 552. *Stair, v.* 1. *p.* 431.

1671. *July* 6. JOHN M'RAE *against* LORD M'DONALD.

No 13. Objected against an execution, that it did not bear that a copy was left. The messenger was allowed to add that clause to the execution, he abiding by it as true.

JONH M'RAE, as heir to John M'Rae his goodsire, pursues the Lord M'Donald, as heir to his goodsire, for payment of a bond of 400 merks *in anno* 1629, granted by the defender's goodsire to the pursuer's goodsire.—The defender *alleged* absolvitor, because the bond is prescribed.—The pursuer *replied*, That the prescription was impeded, partly by minority, and was interrupted by a citation at his instance, against the Lord M'Donald.—It was *answered*, That the first citation made was null, being at the market cross of the shire, by dispensation, upon an unwarrantable suggestion, that there was not safe access to him, which has been past of course by the servants of the Bill-Chamber; whereas they ought specially to have represented the same, and the consideration thereof to the Lords; and so being surreptitiously obtained, *periculo petentis*, it can import no interruption. 2*dly*, The execution at the market cross bears no leaving or affixing of a copy; and as for the second citation, it is but one day before the 40 years be completed, which being so small a time, is not to be regarded in prescription, *nam lex non spectat minima*, and it is also null, though it be done personally, as falling with the first execution.

THE LORDS found that the first citation was sufficient to interrupt prescription, although it had not been formal, through want of a copy, and declared they would sustain the process thereupon, if the leaving of a copy were added to the execution subscribed by the messenger, and abidden by as true. They found also, that the second citation was sufficient interruption, though within a day of completing the prescription, which was to be reckoned punctually *de momento in momentum*. See PRESCRIPTION.

Fol. Dic. v. 1. *p.* 552. *Stair, v.* 1. *p.* 749.

1671. *July* 28. KEITH *against* JOHNSTON.

No 14.

AN execution of an inhibition null, as not bearing delivery of a copy, and so registered, found not suppliable by production of a regular execution, which the messenger offered to abide by.

Fol. Dic. v. 1. *p.* 552. *Stair.*

*** This case is No 143. p. 3786.

*** The like found with regard to the execution of an inhibition, not bearing six knocks, though the question was not with an onerous purcharser, 19th