

No 11.

that, by the constant practice, executions do bear production of the assignation intimated; and thereupon it was *alleged*, that the execution of Watson's intimation was null.

It was *answered* for Watson; There is little regard to be had to impetrated declarations of that sort; but the matter ought to be determined, with regard to the importance of these letters of intimation, which of themselves are sufficient; because they proceed upon a bill to the Lords, which bill bears production of the assignation, and the deliverance runs in these terms, '*Fiat ut petitur*, because the Lords have seen the assignation;' and letters passing the Signet on that bill, there is no further need of a second production of the assignation at the market-cross and pier and shore, which would be but an empty formality.

It was *replied*; That bills for letters of intimation pass, of course, *periculo petentis*; and the Lords are not in use to consider the instructions; neither are the clerks of the bills very careful to see that these instructions are really produced. *2do*, The only use of letters of intimation is, in regard that the party having no residence within Scotland, there can be no intimation made personally, or at the party's dwelling-house; and the letters are only to supply the want of a domicile, that the market-cross and pier and shore shall be reckoned equal to an intimation personally, or at a dwelling-house; so that all other formalities requisite in intimations to parties in Scotland, are to be observed in the execution of letters of intimation, both in reason and by practice.

THE LORDS found the execution of the intimation, not bearing the production of the assignation, null.

Fol. Dic. v. I. p. 259. Dalrymple, No 125. p. 174.

*** See This case by Bruce, *voce* INTIMATION.

1724. July 15.

Colonel ROBERT MONRO of Foulis, *against* JOHN TOUCH of Logiereich.

No 12.
It was objected to an adjudication, that tho' the superiors were named in the *against* of the decret, yet there was no conclusion in the libel *against* them for infesting the adjudger; and therefore the horning *against* them was without warrant, and consequently the charter

COLONEL MONRO having adjudged certain lands belonging to the deceased Alexander Baine from Mr Daniel Baine his son, as charged to enter heir to him, *insisted* in a reduction of an adjudication in the person of the defender, upon this ground, That the sums in it were satisfied and paid by his and his author's intromissions; and, in order to keep the legal open, the following nullities were *objected*; *imo*, That it appeared from the decret that the summons was not called by the clerk, in order to its being enrolled; for, though it bore, that the parties were often called by a macer, yet that could only be understood of the calling before the Ordinary. *2do*, That though the superiors were named in the *against* of the decret, yet there was no conclusion in the libel *against* them for infesting the adjudger; and therefore, the raising horning *against* them was without any warrant, and consequently the charter, bearing to be in obedience

to letters of horning, if there was no foundation for them, the charter and infestment thereon were null.

THE LORDS repelled the nullities.

Reporter, *Lord Grange.* Act. *Jo. Forbss.* Alt. *Ja. Boswell.* Clerk, *Dabrymple.*
Fol. Dic. v. 3. p. 185. *Edgar, p. 83.*

No 12.
 and infestment were null. The Lords repelled the objection.

1745. *June 11.*

STEWART *against* HAY.

No 13.

LETTERS of arrestment cannot be executed in the name of the obtainer's executor, as the messenger is confined to obey the will of the letters.

Fol. Dic. v. 3. p. 185. *D. Falconer.*

* * * See This case, No 21. p. 834.—This case is also reported by Kilkerran, *voce* LEGAL DILIGENCE.

1747. *July 5.* BURGESSES of RUTHERGLEN *against* The MAGISTRATES.

A COMPLAINT against the Magistrates of Rutherglen for an undue election being appointed to be served against them, the complainers, instead of extracting the complaint and the interlocutor, and delivering the extracts to a messenger to be executed against the Magistrates, took the short-hand way of delivering to the messenger the principal complaint itself with the interlocutor subjoined. It was *objected*, That this form was irregular; because the records of Court ought never to be carried out of Court, and the only proper warrant for executing is an extract under the hand of the Clerk of Court.

Elchies *observed*, That commonly the King's authority is interposed by letters under his signet, for citing persons to appear before the Court of Session, but that, in matters which require dispatch, it is customary for the Court to cite by their own authority, as in summary complaints, which are constantly served by authority of the Court, without the intervention of the King's authority; the extracted complaint and warrant for citing being delivered to the messenger, without passing the signet.

As to the objection of delivering the record itself to the messenger as his warrant, he observed, that it was the custom of old for macers to cite all parties within two miles of Edinburgh, carrying with them the record itself as their warrant; and that he has seen in the journals of this Court an instance of an order directed against a secretary of state, to enter his person in ward, within three hours, which must have been served upon the secretary by the authority of the interlocutor itself, as there was no time for extracting.

'THE LORDS accordingly repelled the objection.'

Fol. Dic. v. 3. p. 186. *Rem. Dec. v. 2. No 81. p. 126.*

No 14.
 A messenger served persons complained upon with a copy of the original complaint, and interlocutor upon it, signed by the Lord President. It was found, that there was no necessity for an *extract* of the warrant of citation.