

prove it ; *2do*, Mr Hogg's calling for it *non relevat*, the messenger being obliged to show it to none but the parties ; *3tio*, It is enough for the messenger that he saw the summons under the King's signet, and copied his execution of it ; for where there are 30 or 40 defenders dwelling *per omnes regni angulos*, it is impossible for one messenger to cite them all ; therefore four or five are employed, and the constant practice is, that though all of them have seen the warrant, yet one of them who has most to cite has the summons alongst with him ; and if this were sufficient to cast messenger's executions, it would endanger many diligences ; and though it may be necessary to have the warrant in hornings and captions, yet not in ordinary processes.—*Replied*, This inconvenience is easily remedied, by taking more copies of the summons from the signet ; and it is most unwarrantable in messengers to give copies of their executions, except they have their warrant in their custody to show, if it be called for.—THE LORDS found the messenger not obliged to show his warrant to third parties, not defenders, and that law presumed he had it on him, unless the contrary were proven.—Then it was *alleged*, The active title of this process was not sufficient, being only an infestment of annualrent which is but a servitude, whereas none can pursue a sale but a creditor having a right of property ; *2do*, It ought to be an infestment over the whole subject, which this is not, but only partial ; *3tio*, The progress is not connected.—*Answered*, All the act of Parliament in 1681 requires, is only, that sales be pursued by creditors having a real right, which agrees to an annualrenter as well as any other ; and it was so sustained to Mr William Monypenny pursuing for the roup of Nicolson.—THE LORDS repelled the defence in respect of the answer.—Then *alleged*, It could not sell, because he had Downie and Morton's apprisings both expired.—*Answered*, The first was reduced, and the second stated in the decret of ranking for its sums, which was inconsistent with its carrying the property ; though a creditor may use it both the ways.—THE LORDS thought the expiration not being declared, the appriser might protest to have his right reserved, but it could not stop the roup *hoc loco* ; being *processus executivus et judicium maxime summarium*. See RANKING and SALE. See TITLE to PURSUE.

*Fol. Dic. v. 1. p. 201. Fountainball, v. 2. p. 58.*

1732. February 18. HUNTER against MONTGOMERY of Peanstonhall.

No 7.

A NULLITY objected to an execution of poinding was sustained, viz. that the poinding was performed, and the execution thereof subscribed by a person, who was, by the Lyon Office, deprived from being a messenger at arms, and his deprivation intimated or advertised in the public news prints, prior to the poinding. See This case *voce* DEATH. See APPENDIX.

*Fol. Dic. v. 1. p. 201.*