

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.

No 14.

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.

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.

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.*