

No 12.

THE LORDS admitted the pursuer to amend the execution, he bidding thereby, and ordained the defender to see the same.

Fol. Dic. v. I. p. 552. Stair, v. I. 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. *2dly*, 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. I. p. 552. Stair, v. I. p. 749.

No 14.

1671. July 28.

KEITH against JOHNSTON.

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. I. 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 purchaser, 19th