

No 116. 1681. February 15. GORDON *against* FORBES.

The Lords declared they would reduce all executions made at the market-cross of Edinburgh, and pier and shore of Leith, which did not bear that three oyesses were given.

GORDON of Park having pursued reduction, and improbation of a summons, and executions thereof, in *anno* 1633, for reducing the ratification of a right to the estate of Balvenie upon a minority and lesion, the reason of reduction against this summons is, that the executions being at the market-cross, were null, not bearing three oyesses. *2do*, They were false; whereupon the writer of the executions, and other witnesses being examined, they did depone, that the executions were written in *anno* 1659, as they were dated by Alexander Abernethy, albeit the executions bear, to have been done by a Sheriff in that part, in *anno* 1633. And it seemed to the LORDS that it was but feinzied, and the summonses of reduction were all blank, and never filled up, till 1659. It was *answered*, That there is no law nor statute requiring three oyesses at market-crosses, but though that use is sometimes to be added in executions, yet it is sufficient, that the executions bear, that the messenger or executor made publication thereof, at the market-cross. THE LORDS having appointed the Lord Register to inspect the register of inhibitions, whether they bear ordinarily three oyesses, he did report they did not, but that it was more ordinary they did bear, 'that the messenger made publication.' But the LORDS having advised the testimonies of the witnesses of the improbation, found the executions improven as false, and so had no necessity to determine upon the nullity for want of the three oyesses; but upon that occasion, they ordained an act of sederunt to be made, and publication by proclamation, that albeit by an evil custom, commonly practised, the executions of inhibitions and summons, and other diligences, at the market-cross, did only bear, that the messenger 'did make publication of the letters,' not expressing the manner how, 'by three oyesses,' whereby the lieges were exceedingly prejudged; these oyesses being the mean to publish the letters, and to cause the people take notice, that the parties concerned might be advertised; therefore the LORDS did declare, that in all executions to be made hereafter at the market-cross of Edinburgh, or pier of Leith, it should particularly be exprest, that three oyesses should be given by the executor, in an audible voice, before the reading of the letters, otherways the LORDS would not sustain such executions of letters, which bore only, that the executor made publication of the letters.

Fol. Dic. v. 1. p. 266. Stair, v. 2. p. 859.

No 117. 1698. December 7. YEAMAN *against* TROTTER.

An execution at the market-cross of Edinburgh, and pier and shore

IN a competition between Marjory Yeaman, and Oliphant her husband, *against* Dr Trotter and others, for a sum arrested by both in the hands of Lyon of Carse, it being *objected* against Dr Trotter's execution, that it was null, be-

ing used against Carse as out of the country, at the market-cross of Edinburgh, and pier and shore of Leith, and did not mention the three oyesses, which is required by the decision, Gordon against Forbes, No 116. p. 3768.: *answered*, Solemnities have been multiplied by over-cautious creditors, where no law required them, and so can be no rule to others; and the Lord Register being ordained, in the case cited, to try the custom as to the oyesses in arrestments, it was found to vary; and though an act of sederunt was intended then to regulate for the future, yet it was not done, so it has not yet come to any fixed custom; and therefore must be determined on the old grounds till it be otherwise appointed. THE LORDS sustained the arrestment, though wanting the intimation of the oyesses.

Fol. Dic. v. 1. p. 266. Fountainball, v. 2, p. 23.

No 117.
of Leith,
which did not
mention the
three oyesses,
was sustained,
notwithstanding
of the
above deci-
sion.

1705. December 20.

SCRIMZEOUR *against* BEATON.

EXECUTION of apprising sustained, though it bore not three oyesses, but only several oyesses.

Fol. Dic. v. 1. p. 266. Fountainball.

No 118.

*** See this case, Div. 4, Sec. 4, *b. t.* No 103. p. 3758.

1706. February 14.

EARL of LEVEN *against* DURHAM of Largo, and NICOLSON of Trabrown.

AN inhibition was sustained, though the execution at the market-cross bore only *three oyesses, open and public reading*, and wanted the words *open proclamation*; in respect it was alleged that three oyesses, and public reading, import open proclamation, and, after trial, the stile of many inhibitions were found to run in the same tenor.

Fol. Dic. v. 1. p. 266. Fountainball.

No 119.

*** See this case, Div. 4, Sec. 1, *b. t.* No 81. p. 3743.

1715. February 22.

CAPTAIN PRESTON *against* SIR JOHN CLERK.

CAPTAIN PRESTON pursues a reduction of the right of patronage of the church of Laswade *ex capite inhibitionis*, against Sir John Clerk's author.

It was *alleged* for Sir John; The inhibition was null and reducible; because the inhibition which was executed against the party out of the country, did not bear three oyesses, nor public reading of the letters at the pier and shore of

No 120.

An inhibition
against a per-
son out of the
country was
found null,
because the
execution at
the pier and
shore of Leith