

No 21.

1686. *January.* MR ARCHIBALD NISBET *against* M^cLELLAND, &c.

FOUND, that the first summons being executed at Mr Archibald Nisbet's writing-chamber, and a copy delivered to his servant there, the execution was null and contrary to the act, though he had got the second summons personally apprehended. Here the writing-chamber was not contiguous to the house.

Fol. Dic. v. 1. p. 259. Harcarse, (SUMMONS.) No 916. p. 258.

1708. *July 13.*ALEXANDER BRUCE *against* SIR JAMES HALL of Dunglass and Others.

No 22.

Citation, by leaving a copy with the party's servant where he lodged, when he himself was asleep in bed, found null, as contrary to the 75th act, Parl. 1540, which requires, that persons not apprehended personally should be cited at their principal dwelling-house.

AT the calling of a summons of *bonorum* at the instance of Alexander Bruce, against Sir James Hall and other creditors, it was *alleged* for Sir James, That no process could be sustained against him, because he was not duly cited; in so far as the execution bears that the messenger had left a copy with Sir James's servant where he lodged in Edinburgh in the morning, when Sir James was asleep in bed, as the servant declared; which execution is contrary to the act 75th, Parliament 6th, James V. seeing it amounts neither to a personal citation, the messenger not having met with Sir James; nor to a citation at his dwelling-house, Sir James having no dwelling-house in Edinburgh.

Alleged for the pursuer; The messenger's civility in not rushing into the room to wake the gentleman, ought not to be obtruded as a fault, but the execution should be sustained; especially considering, that Sir James cannot deny his having got a copy.

Answered for the defender; If messengers observed not the method of citation prescribed, they may introduce what arbitrary forms they please. Had the messenger been violently debarred from access, something might be said, but his civility can never pass for a legal execution. Nor is that formality to be made up by the declarations or oaths of parties; for it is not the party's having the copy, which might accidentally come to his hands many ways, but the messenger's observing the legal form, that renders an execution valid.

THE LORDS sustained the nullity of the citation, and found no process against Sir James Hall.

Fol. Dic. v. 1. p. 259. Forbes, p. 263.