

‘ after the form and tenor, &c. whereof I affixed and left a copy, &c. which
 ‘ copy was subscribed by me, and did bear the day and date of the affixing
 ‘ thereof, witnesses names and designations therein inserted, and hereto sub-
 ‘ scribing, which are James Nielson and John Young, fleshers in Falkirk ; and,
 ‘ for the more verification hereof, I and the said witnesses have subscribed the
 ‘ samen,’ &c.

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Upon this it was *objected*, That although the execution bears the subscrip-
 tion of the witnesses, yet it does not certify that they were present when the
 citation was given by affixing, &c.

Answered, The words above recited sufficiently imply that the witnesses were
 present.

THE LORD ORDINARY repelled the objection ; and, on a reclaiming petition,

‘ THE LORDS adhered to his interlocutor, and refused the desire of the pe-
 tition.’

Act. Alex. Lockhart.

Clerk, Kirkpatrick.

Fac. Col. No 29. p. 48.

1784. January 16.

JOHN PATERSON against JAMES THOMSON.

PATERSON pursued Thomson in an action of reduction *ex capite inhibitionis*.
 Thomson *objected*, That the inhibition was null, its execution concluding thus :
 ‘ Which copy of inhibition was signed by me, and did bear the date hereof,
 ‘ &c. with the names and designations of Andrew Johnston, sutor in Selkirk,
 ‘ and William Stewart, weaver there ;’ without mentioning that they ‘ were
 ‘ witnesses to the hail premises,’ according to the usual style ; although they
 actually did subscribe, and annex to their subscriptions the word ‘ witness.’ In
 support of this objection the defender

Pleaded ; The law requires that *diligence* should be regularly and formally
 executed, and has appointed the messenger’s report or *execution* as the only evi-
 dence of such formality. If in any case it does not thence fully appear, the
 diligence must fall to the ground. From this principle proceeded the act of se-
 derunt, 28th June 1704, prohibiting *blank executions* ; together with
 a variety of decisions under this title, EXECUTION, and likewise one not
 collected, Herriot *contra* Magistrates of Haddington, 23d December 1740, See
 APPENDIX. It is true, that the word ‘ witness’ is here subjoined to the
 names of the persons subscribing ; but that addition denotes nothing more
 than attestation of the messenger’s signature, and not of the facts narrated in
 his *execution*.

Answered, Though the precise words ‘ witnesses to the premises,’ are not en-
 grossed in the body of the *execution*, yet in the whole of that writing taken to-
 gether their meaning is sufficiently expressed ; than which the law requires no

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An execution
 of inhibition
 which con-
 tained the
 names and de-
 signations of
 the witnesses,
 but without
 mentioning
 that they
 ‘ were wit-
 ‘ nesses to the
 ‘ premises,’
 was sustained,
 the witnesses
 having sub-
 scribed the
 execution and
 added the
 word ‘ wit-
 ‘ ness’ to their
 subscriptions.

No 162. thing farther; agreeably to the determination of the Court in the case of Clark *contra* Waddell, 17th July 1752, Fac. Coll. No 161. p. 3806.

THE LORD ORDINARY 'repelled the objection.' And, on advising a reclaiming petition and answers,

THE LORDS adhered to the interlocutor of the Lord Ordinary.

The defender again reclaimed; when his petition was appointed to be answered. But the COURT still adhered to their former judgment.

Lord Ordinary, *Braxfield*.
Clerk, *Robertson*.

Act. *Ad. Ogilvie*.

Alt. *Macleod*.

Fol. Dic. v. 3. p. 189. Fac. Col. No 137. p. 216.

Inhibition of teinds, when to be executed; *See* TACK.

Form of executing warning; *See* REMOVING.

If a messenger is allowed to mend his execution after being produced in judgment; *See* LITIGIOUS.

Formalities of execution as to witnesses inserted and subscribing; *See* WRIT.

Upon what number of days must citation be; *See* INDUCIÆ LEGALES.

Defects in executions, how suppliable by witnesses; *See* PROOF.

Executions by deprived messengers; *See* CONSUETUDE.

See Drumlanrig against Maitland, *voce* LEGAL DILIGENCE.

Clarkson against Magistrates of Edinburgh, *voce* COMMUNITY.

Gall against Town of Forfar, *voce* PRISONER.

Gordon against Laird of Lee, *voce* LEGAL DILIGENCE.

No 27. p. 3108.

FORUM COMPETENS.

LEGAL DILIGENCE.

APPENDIX.

* * Cases referred to as in Sec. 14, of Div. 4. *b. t.* are in Sec. 12.