

No 136.

ders; witness, processes of ranking and sale; improbations against creditors; processes against debtors, and others of the like nature; where the practice is to name only that single defender who is cited in the execution.

THE LORDS sustained the objection upon this ground, that the defenders were all connected together, and that it was necessary to call every one of them in the process. But it was the opinion of the COURT, that in a process against several defenders, having no connection with each other, the objection is not good. For there, though all the parties be called in one summons, yet the case is the same as if there were as many different processes as there are different defenders, in which case there must be an execution against each of the defenders separately; and, the bringing them all into one summons, makes no difference as to this point.

In this cause, the LORDS were of opinion, though they had no occasion to give judgment, That sustaining the objection of all parties having interest not being called, must have a further effect than barely to sist process till the party left out be brought into the field, by a new process to be conjoined with the former; that it must have the effect to cast the process altogether, leaving the pursuer to bring a more regular process. And this seems to be agreeable to the forms of the Court; for, if a party be not bound to answer, in respect that all parties having interest are not called, nothing remains but that he be dismissed from attending the Court.

*Rem. Dec. v. 2. No 87. p. 145.*

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S E C T. X.

Executions which require not the Ordinary Solemnities.—Form of arresting a Ship.—Verbal Citation.

1634. July 11.

HAY against GICHT.

No 137.

A citation of a tenant to his master's Baron-court may be proven by witnesses.

IN a reduction of a decret obtained by the L. Gicht, against one Hay, his tenant, in his own Court, for payment of farms confest resting owing by Hay, upon this reason, because the tenant was never cited, and there was no citation nor execution extant to qualify the same; in this process the Bailie, pronouncer of the decret, and the clerk thereto, and the officer, executor of the poinding execute thereupon, being called, and being all deceased now *lite pendente*, before this process was discust, whereby the defenders *alleged*, that the process should cease, while the same were transferred in some person to represent them; this allegiance was repelled, and the LORDS found no necessity of transferring;

especially seeing nothing was concluded against the judge for wrong done, nor no reason libelled thereon, and that the party ought to be answerable for the warrant of his own sentence; especially the Baron's self being the obtainer thereof, in his own court, before his own Bailie, the members of the court being of his own creation. *Item*, The defender offering to prove against the reason of reduction, that the defender in that decret, viz. the tenant, was summoned to the giving thereof, and that he offered to prove it by witnesses; the LORDS found this allegiance relevant to sustain the decret, and that it was relevant to be proven by witnesses, and that there was no necessity to prove the same by writ; for in such acts and procedures, before Baron Bailies, in Baron Courts, the LORDS found no necessity that there should be any citation extant in writ, seeing the citations in such courts are frequently done by verbal direction, and if it can be proven that the tenants be truly cited, albeit not in writ, it is sufficient.

Act. *Advocatus & Mowat.*

Alt. *Nicolson & Baird.*

Clerk, *Hay.*

*Fol. Dic. v. 1. p. 269. Durie, p. 725.*

1634. July 18.

HART against TENANTS.

MR JOHN HART, pursuing a removing from a house in the Canongate, conform to a warning, as use is, made within burgh; it being *alleged*, That the warning was null, because it was not execute upon 40 days at the parish kirk within which the house lies; the LORDS repelled the allegiance, and sustained the warning; because they found, that warnings from houses within burgh needed not to be made nor executed at the parish kirk; seeing that is only required by act of Parliament to be done in field land; and not for houses in towns, from which warnings to remove are made by the town officers, at the verbal desires of parties, without necessity of precepts in writ from the party, or any other direction from the Magistrate, and by chalking of the doors, testified to be done by the officer executor, and witnesses, without any record of the execution in writ.

Clerk, *Scot.*

*Fol. Dic. v. 1. p. 269. Durie, p. 729.*

1637. March 22. FINNIE in Peterhead against GRAY.

ONE Finnie, by a precept from the Earl of Marshall, as admiral-depute, having caused arrest a ship in Peterhead pertaining to Andrew Gray, for satisfying of a debt owing to him by the said Andrew, and pursuing before the Lords upon that arrestment, to make the ship furthcoming, the debtor's son, who intromitted with the ship; wherein the Lords sustained this action pursued before

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Verbal warning at a house within burgh is valid, without a written execution or publication at the parish church.

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Arrestment of a ship good, if intimated personally to the possessor, though the