

No 82. saying 'witness to the affixing,' can never wrong the execution, which had been good without it: more than it could be quarrelled as null for not bearing, 'That they were witnesses to the open and public reading and crying of the 'oyesses,' which are likewise said to be done in the execution.

THE LORDS repelled the nullities, and sustained the execution.

*Fol. Dic. v. 1. p. 263. Forbes, p. 697.*

1750. November 29. JEAN DONALDSON *against* DONALDSON.

No 83.

It is only where the parties are so connected in the action, that it cannot proceed in the absence of any one of them, that the execution must contain the names of all the defenders.

THOMAS DONALDSON now of Kinnardy, and others, being called by the said Jean in the exhibition of a tailzie of the estate of Kinnardy, said to have been made by William the elder brother of the said Thomas, the Ordinary sustained the no-process objected for Kinnardy, that the execution against him did not contain the names of the other defenders.

The pursuer reclaimed; and the Ordinary, upon hearing the opinion of his brethren, being satisfied that the objection ought to have been repelled, the petition was remitted to the Ordinary.

The act 1672 requires, that the execution should contain the names and designations of all the defenders; and where parties, pursuers or defenders, are so connected that the process cannot proceed if any one of them are wanting, as for example, in reductions of elections in burghs, it has been found a nullity in the execution, that any of the parties' names were omitted to be expressed in it: But that in every case, where more parties are called in one summons, the execution should be void for not bearing the names and designations of all the parties, has no foundation in the statute, in practice, or the reason of the thing, which in no case can be more apparent than in that of a common exhibition. Nay, the said construction put upon the statute in the reduction of an election may even be thought to have gone far enough, as the intent of the statute seems to have been no other than to require that the names of pursuers and defenders should be express in executions, and not related generally, as they used formerly to bear only 'the persons within written;' which might be thought sufficiently answered by two different executions, one containing one part of the defenders, and another containing another part of them, each expressing their names and designations.

*Kilkerran, (EXECUTION.) No 2. p. 169.*

1755. February 20.

SIR WILLIAM DUNBAR, and Others, *against* JOHN M'LEOD younger of M'Leod, and Others.

No 84.

Where an execution is written on the back of

A DOUBLE election of Magistrates and Councillors in the burgh of Forres, occasioned a process at the instance of the one set, headed by Sir William Dunbar