

The statute 1696 applies only to the case where deeds are written on more than one sheet. So it was found, Robertson *contra* Ker, 7th January 1742, No. 190. p. 16955. No. 194.

To the second objection: This is not one of those deeds specified in the revenue-statutes establishing stamp-duties. It is not a lease, but only an agreement to grant a lease. But, if it did require stamping, the objection could be removed by getting the stamp still adhibited, upon paying the usual price.

“The Lords repelled the first objection to the pursuers title of action founded on the act 1696:—But, as to the second objection, sists process until the agreement is duly stamped in terms of law.”

Act. Fraser.

Alt. Campbell.

Fac. Coll. No. 15. p. 23.

1795. February 19. DAVID PETER *against* THOMAS ROSS and Others.

Thomas Ross, and other creditors of John Macomish, having poinded some spirits in his possession, the validity of the pointing was objected to by David Peter, who pretended to have obtained a right to them from the common debtor.

The Sheriff having sustained the pointing, David Peter brought an advocacy, and also a reduction of the execution, which consisted of more sheets than one, because one of the pages of it (which, however, contained nothing material) was not signed by the messenger, and another not signed by the apprisers.

Pleaded for the pursuer: It seems to have been the intention of the Legislature to put the executions of messengers, in so far at least as relates to the subscription of the parties, on the same footing, in point of solemnity, with private deeds. When formerly the latter were authenticated by the seal of the granter which, when the deed consisted of more sheets than one pasted together, was affixed to each of the joinings, the act 1469, C. 32. ordered messengers to fix their seals to their executions; and although it is not expressly said so in the act, it must have meant, that where the execution consisted of more sheets than one, the operation should be repeated in like manner. Afterwards, when the act 1540 required, that private deeds should be authenticated by the subscription of the granter, which in practice was interpreted to mean, that the subscription should be repeated at each of the joinings, the act 1686, C. 4, made the want of the subscription of the messenger a nullity in an execution; and there being the same reason for giving an extensive interpretation to this statute as to that of 1540, it must have been meant, that an execution in the old form should be subscribed in the same manner. The act 1696, C. 15. allowed “contracts, decreets, dispositions, extracts, transumps, and other securities,” to be written bookwise, provided every page be marked by the number first, second, &c. and signed as the margins were

No. 195.
An execution of pointing consisting of more sheets than one, sustained, although one page of it, which contained nothing material, was not signed by the messenger, and another not signed by the apprisers.

No. 195. before." And although, strictly speaking, perhaps this statute does not apply to executions, or other publick instruments, practice has likewise extended it to them. See Thomson's Duty of Messengers, p. 30. Accordingly, although the act 1696 does not mention sasines, it has been considered as virtually repealing the act 1686. C. 17, in so far as it requires every page of a sasine to be signed by the witnesses, but does not require the pages to be numbered, Ersk. B. 3. T. 2. § 16. Indeed, as the act 1696 is the only authority for writing executions bookwise, if it does not apply the execution is null, because it is not written in the old form. The execution being therefore, in either view, defective in point of legal solemnity, it cannot be supported, however immaterial the defect may be to the substance of the deed ; EXECUTION, Div. 4. Sect. 6

The Lord Ordinary repelled the reasons of reduction.

A reclaiming petition was (29th January 1795) refused, without answers.

A second reclaiming petition having been presented, it was

Observed on the Bench : The act 1686, C. 17. does not require every page to be subscribed, but every leaf ; and even the act 1696 (if it applies to the executions), is not very explicit on the subject. It ordains pages to be signed, " as the margins were before ;" but the sole object of signing at the margins was to prevent one sheet from being fraudulently substituted in place of another. And the act 1696 cannot reasonably be supposed to have meant any thing more, than that each sheet or piece of paper should be subscribed for the same purpose. See December 1742, Williamson gaainst Williamson, No. 191. p. 16955. Besides, the pages which are not signed in the present case contain nothing material to the execution.

The Lords also refused this petition, without answers.

Lord Ordinary, *Ankerville.* For the petitioner, *Dean of Faculty Erkin, Hagart.*
Clerk *Gordon.*

D. D.

Fac. Coll. No. 159. p. 364.

SECT. VIII.

Privileged Writs.

BUCHANAN against M^rARTEY.

No. 196. One notary is sufficient to a testament of whatever extent the subject be:

Colvil MS.

* * This case mentioned in Fol. Dic. v. 2. p. 545. without a date, has not been found in the MS. See APPENDIX.