

Qui dicta Inquisitione Interrogant, facienda, ad Castellam Nostri
Mutatis, et hoc breve legit Me ipso apud Dinkburgum Inquisitio die Martis
Majal anno regni nostri 1792

Albeit this special brief is Directed to the Judge ordinary, as the
Sheriff, Stewart, Bailie of Regality, or Bailie of the Burgh Royal, or
the Heritage lies: Yet the words of this upon Application made
law by a Bill Representing that the Judge ordinary of the place is ap-
plicable to some Just exception, or that the Inheritance lies in several
Jurisdictions, will grant Warrant to the Director of the Chancery, to give
for the a brief to another qualified person, and frequently to the one
of the Justice or any two of them, as Judges in that part for serving
the party here in the Justice house; partly, for preventing great Stran-
gely Multiplicity of Writs before the respective ordinary Judges; par-
tial and doubts arising about the Service may be cleared by Law.
For which end the Lords do some times, upon Application of the persons
Concerned, appoint one or two of their own Numbers to be Assessors
to the Assessors, and Decide any further Difficulties reported to them by
the Assessors in person. Thus two Assessors who had taken brief
to be specially served heirs of tail, viz to one Deceased in certain
being leased upon their several Estates and titles produced before
the Assessors of the Justice and their Assessors; and the Debate Report
to the Lords: the Service was stayed, till it was summarily De-
termined in June in had left right to serve heirs 28 November 1771
Bon of Newtown contra Don. Because, albeit Briefs are Exe-
cuted in the Chancery of course, and Services proceed summarily: Yet if
parties appear and Exception upon grounds Instantly Verified
Exclude the title of the Claimer, they are heard. And the Justice
being only Judge of fact in a Service, the point of right ought
to be previously tried for preventing plead, and Expenses to all
parties, and the Service proceed by Direction or special Judgment
from the Lords, being there cannot be two hours, or two Dominions
Solidifying those is manifest hazard of perjury, for two Inquest
or more to find that two persons upon different grounds of their
are herself and lawful heirs of provision to the same person
who did last vest and seized of certain lands.

The Judge ordinary or Delegated to whom the Brief is
Directed, grant warrant by precept to an officer named by the
Direct, to execute and proclaim the Brief upon 16 Days Warrant
to be served in such a place at a specified Day. Which proclama-
tion must be made at the Market Cross where the Land lies
upon a lawful Market Day betwixt the hours of 11 & 12 in
the forenoon in time of open Market by three several tryers,

then reading the Brief and the Judges precept to the officer, and Warning
all persons having or pretending Interest to appear before the said Judge
or Delegated at the said Day and place Appointed to hear and see the
Brief served and Returned but 99 Par. C. P. 4. In which case it is not
necessary, that both the day of the proclamation and the day appointed
for the Service be free, but it sufficeth that either of those be free, and the
other be reckoned as one of the 15th 27 July 1626. Munk's contract in book.
The Lord Stair (lib. 3 fol. 5 § 30) holds that proclamation of the Brief
at the Market Cross is not necessary, when it is Executed at the Michael
masse head court: Because all the Judges being obliged to attend there,
the Service may proceed immediately, without Delay. Common to act 127
Par. 1. but for George Mackenzie (observ. on d. act 127) Reckons this
not to be a Disadvantage. That part of act 99 Par. C. P. 4 which makes in a
Certain case proclamation before the town officers and honest Men
equivalent to an Execution on the Market Day, is not now observed.
Mackenzie observ. on d. act 99. The My Lord Stair (ibid.) holds the Inquest
as Law without any Remark concerning its being dispensed. An Inquest
is summoned to the Day appointed for the Service, before so many days
as the Judge pleases, and unless objectionable persons present may be Com-
pelled to pass upon the Inquest but 99 Par. C. P. 4 Not only by the ordinary
Remedy of Pecuniary penalties, but also by some extraordinary compul-
sion of Restraint upon their persons, Munk's lib. 2. The Parliament
were the Inquest in serving the Earl of Mar heirs to his Mother
The Chancellor and fourteen of the Lords of Session were the Inquest
in serving King Charles the first heir to Queen Anne's Mother;
and King Charles the second heir to Charles Duke of Lennox. At
which times that was said to be inconvenient, because no other
Judge would Redress their Writs & But. Certainly either the Parliament
might have Redressed, and found the Lords of Session guilty of Error;
or the Lords might have Redressed their Writs upon new Evidence,
seeing in that case they proceeded not as Supreme Judges but as
Members of Inquest. Mackenzie observ. on act 92 Par. C. P. 3. in
There is no necessity to summon particular persons as Defendants to the
Serving of heirs. But the Lords of Session upon Application of a
Donatary of ones Bastardy, ordered the Director of the Chancery
to Issue out Briefs for serving heirs to him, without a Plank Justit
for citing the Donatary, Stair ibid. And Briefs upon the like
application made by the Relations of ones Deceased, were prohibited
to be given out of the Chancery, till Intimation was made to them
of the Judge to whom the Briefs was to be Directed, that they might
attend and be heard for their Interest 6 Feb. 1680 Napier's Sup-
plicants.