No 146.

were shortly after the act of Parliament for registration of inhibitions, which have exceedingly altered the case, for all prudent purchasers do search the registers, and if they do find any defective inhibition registrate, they know it cannot be made up after, and so does surely proceed to acquire, and a stronger case was fully debated *in presentia*, in July 1671, betwixt the Laird of Caskieben and Sir John Keith, No 143, p. 3786; where an inhibition wanting these words, 'a copy delivered,' being so registrate, though the messenger added the words upon the margin and signed it, and offered to prove it was so done, yet the LORDS would not sustain the same.

THE LORDS found the inhibition null for wanting of the six knocks, being so registrate, and would not supply it upon any probation.

Fol. Dic. v. 1. p. 270. Stair, v. 2. p. 803.

1681. *November* 23. SANDERS *against* JARDINE.

No 147.
An expired comprising was found null, because the execution bore not delivery of a copy to the debtor, but only that he was personally apprehended, and lawfully warned.

IN the action of reduction pursued at the instance of James Sanders donatar in a gift of the *ultimus hæres* of James Monteith against George Jardine, wherein he craves an apprising deduced in *anno* 1653, against the said James Monteith, at the instance of Fullerton, from whom Jardine derived right, might be reduced upon this reason, that the comprising, and execution of the letters bear not, that there was a schedule delivered to the party, but only bore, that he was personally apprehended, and lawfully warned; which reason of reduction, THE LORDS found relevant to take away the comprising simply, albeit it was expired; in regard they found, that unless a schedule had been delivered to the party, he could not come prepared to the leading of the comprising, or know what sums he was to pay to the creditor, who intended to deduce the comprising, for himself, or as assignee by others.

Fol. Dic. v. 1. p. 269. P. Falconer, No 3, p. 1.

*** Harcarse reports the same case:

THE LORDS reduced an apprising *simpliciter*, and would not sustain it as a security for the principal sum and annualrent, upon this ground, that the execution of the denunciation of the lands did bear only that the debtor was lawfully warned, conform to the will of the letters, personally, and not that a copy was delivered; because, as in absence, copies ought to be left at the dwelling-house, so copies ought to be delivered to the party, when personally apprehended; and the execution ought to bear expressly, that copies were left, which was not found imported by the general of 'lawfully warned,' although we have no positive act appointing copies to be delivered to parties apprehended personally in civil actions, as there is for delivering of copies in criminal causes,

No 147.

Queen Mary, Parliament 6, cap. 33. But the common stile of executions of denunciations mentions the delivery of copies to such as are personally apprehended.

Harcarse (Comprisings) *No* 268, *p.* 63.

1682. *February.* Mr James Cunninghame *against* M'Leod and Hamilton.

No 148.

A messenger's execution of arrestment, bearing that the letters were duly and lawfully executed, but not that a copy was left, found null and informal, and second arrester preferred, albeit the said first arrestment mentioned that the person against whom it was executed, was personally apprehended.

Fol. Dic. v. 1. *p.* 270. *Harcarse* (Arrestment) *No* 77, *p.* 14.

1709. *July* 30. Cromby *against* Robertson.

No 149.
An inhibition was sustained though the execution did not bear that a copy was delivered to the party inhibited, in respect it bore that he was duly and lawfully inhibited and personally apprehended.

John Cromby, sheriff-clerk of Roxburgh, pursues a reduction against James Robertson chirurgeon in Jedburgh, for reducing a disposition of some lands made to him by one Scougal *ex capite inhibitionis ;* against which Robertson excepted, that the inhibition was null, because, though the execution bore personally apprehended, yet it did not mention that a copy was delivered. *Alleged,* The inhibition was good, notwithstanding that defect ; for being against him personally apprehended, law presumes *omnia fuisse solenniter acta,* and that a copy was given ; and being duly published and registrated, that was sufficient to put him *in mala fide* to purchase ; and, in a late case, No 159, p. 3805 ; where an execution bore the messenger had delivered a just and authentic, before the following witnesses, without saying 'copy' or 'double,' the Lords found it an omission suppliable, and sustained the execution. *Answered,* The delivery of a copy was one of the most necessary and essential parts of an execution ; and the 141st act, 1592, ordains copies of summonses, &c. to be delivered to the parties ; and by act 75, 1540, the manner of the delivery of copies is there set down ; and in executions against parties out of the country, a copy must be affixed on the market-cross of Edinburgh, and pier or shore of Leith. And Stair, p. 427, and 683, of his institutions, is most positive and express therein ; and so is Hope, *Tit.* Horning, Monteith *contra* Kirkwood, No 93, p. 3754 ; and Durie, 24th December 1628, Potter *contra* Baillie, *voce* Jus Tertii, so that a personal execution will never suppose or presume the delivery of a copy. Neither can this defect be supplied by any other equivalent whatsoever ; and where law or custom require a special solemnity, the want of it makes the deed null, *et quod nullum est nullos sortitur effectus* ; and the publishing and registration does not supply the defect, for *bonum est ex integra causa, malum vero ex singulis defectibus. Replied,* There is no statute requiring the delivery of a copy where