

No 159. 'ing the date hereof, witnesses names and designations;' and the copies are duly recorded in the African books. Now, 'I left a just,\* could in nature imply nothing but a copy; and the word 'copy' is added and signed on the margin, before any interlocutor in the cause, by the messenger, who abides by the verity of it. And was it ever heard that a writ was declared null for want of one word in one place of the body of it, where such a word is exprest in the same clause, and necessarily understood where wanting.

THE LORDS repelled the objection against the arrestments, and preferred the arresters.

*Forbes, p. 269.*

No 160.

Found as  
above.

1709. February 23. EARL OF SEAFIELD *against* The CREDITORS of BOYN.

IN the declarator of single and liferent escheat of Sir Patrick Ogilvie elder, and James Ogilvie, younger of Boyn, pursued by the Earl of Seafield, the Creditors *alleged*, That the Earl's gift could not be declared, the execution of the horning whereupon it proceeded being null *quoad* James Ogilvie, in so far as it bears not, that the messenger left a copy, but only, 'That he left a 'just and authentic, in the lock-hole of the most patent door of James Ogilvie's dwelling-house.' Now, seeing the execution bears not a copy to have been left (which is a substantial in executions against those not personally apprehended) it must be presumed that nothing was left to certiorate the party: And one not certiorated cannot be said to be cited; especially in the execution of a horning, which is the foundation of a penal diligence.

*Answered* for the pursuer; The simple omission of the word copy *per incuriam* of the writer, cannot annul the Earl's diligence; especially considering, that the word *authentic* doth sufficiently import an authentic copy. Because there is mention of *a copy* in the former part of the executions; and, the word *authentic* is to be taken *secundum subjectam materiam*. For as by *authentic*s subjoined to the imperial constitutions, are understood legislative authentic constitutions, so an *authentic* delivered in an execution, must be understood of such an authentic as the matter requires. Nor doth it alter the case, that this is an execution of horning; though, in some material points, executions of horning are more strictly interpreted, than those of summonses.

THE LORDS repelled the objection against the execution.

*Fol. Dic. v. 1. p. 270. Forbes, p. 325.*

1752. July 17. ANDREW CLERK *against* JAMES WADDEL.

No 161.

IN a competition of adjudgers, it appeared that the execution of Waddel's summons of adjudication concluded in the following manner, viz. 'This I did

‘ after the form and tenor, &c. whereof I affixed and left a copy, &c. which  
 ‘ copy was subscribed by me, and did bear the day and date of the affixing  
 ‘ thereof, witnesses names and designations therein inserted, and hereto sub-  
 ‘ scribing, which are James Nielson and John Young, fleshers in Falkirk ; and,  
 ‘ for the more verification hereof, I and the said witnesses have subscribed the  
 ‘ samen,’ &c.

No 161.

Upon this it was *objected*, That although the execution bears the subscrip-  
 tion of the witnesses, yet it does not certify that they were present when the  
 citation was given by affixing, &c.

*Answered*, The words above recited sufficiently imply that the witnesses were  
 present.

THE LORD ORDINARY repelled the objection ; and, on a reclaiming petition,  
 ‘ THE LORDS adhered to his interlocutor, and refused the desire of the pe-  
 tition.’

Act. Alex. Lockhart.

Clerk, Kirkpatrick.

Fac. Col. No 29. p. 48.

1784. January 16.

JOHN PATERSON *against* JAMES THOMSON.

PATERSON pursued Thomson in an action of reduction *ex capite inhibitionis*.  
 Thomson *objected*, That the inhibition was null, its execution concluding thus :  
 ‘ Which copy of inhibition was signed by me, and did bear the date hereof,  
 ‘ &c. with the names and designations of Andrew Johnston, sutor in Selkirk,  
 ‘ and William Stewart, weaver there ;’ without mentioning that they ‘ were  
 ‘ witnesses to the hail premises,’ according to the usual style ; although they  
 actually did subscribe, and annex to their subscriptions the word ‘ witness.’ In  
 support of this objection the defender

*Pleaded* ; The law requires that *diligence* should be regularly and formally  
 executed, and has appointed the messenger’s report or *execution* as the only evi-  
 dence of such formality. If in any case it does not thence fully appear, the  
 diligence must fall to the ground. From this principle proceeded the act of se-  
 derunt, 28th June 1704, prohibiting *blank executions* ; together with  
 a variety of decisions under this title, EXECUTION, and likewise one not  
 collected, Herriot *contra* Magistrates of Haddington, 23d December 1740, See  
 APPENDIX. It is true, that the word ‘ witness’ is here subjoined to the  
 names of the persons subscribing ; but that addition denotes nothing more  
 than attestation of the messenger’s signature, and not of the facts narrated in  
 his *execution*.

*Answered*, Though the precise words ‘ witnesses to the premises,’ are not en-  
 grossed in the body of the *execution*, yet in the whole of that writing taken to-  
 gether their meaning is sufficiently expressed ; than which the law requires no

No 162.

An execution  
 of inhibition  
 which con-  
 tained the  
 names and de-  
 signations of  
 the witnesses,  
 but without  
 mentioning  
 that they  
 ‘ were wit-  
 ‘ nesses to the  
 ‘ premises,’  
 was sustained,  
 the witnesses  
 having sub-  
 scribed the  
 execution and  
 added the  
 word ‘ wit-  
 ‘ ness’ to their  
 subscriptions.