

No 143.

supplied any way, but that it were proven by the oath of the keeper of the register, that that clause was on the margin of the execution, when it was presented to the register, and was only neglected to be insert by him; which shews how necessary a solemnity the Lords have accounted the giving of a copy, and registrating thereof; and if solemnities of this kind, be by sentence passed over, it will not only encourage messengers to neglect all accustomed solemnities, but in course of time may encroach on all other solemnities; whereas, if this be found necessary, none will ever hereafter omit it, or any other necessary solemnity.

THE LORDS found the inhibition null, and that the delivering of a copy was a necessary solemnity, which not being contained in the register, they would not admit the same to be supplied by probation, in prejudice of a singular successor, acquiring for a just price.

*Fol. Dic. v. 1. p. 269. Stair, v. 1. p. 767.*

No 144.

1675. January 29.

M'INTOSH against M'KENZIE.

A DECRET against a person holden as confest before the Lords of Session about 20 years ago, was questioned as null; upon that pretence, that it did not bear, that the party, against whom it was given, was personally apprehended, but only that he was lawfully cited.

THE LORDS found, that after so long time, the said decret could not be declared null and void, upon pretence of an intrinsic nullity; in regard the said decret did bear, that the defender was lawfully cited to give his oath; and he could not be thought to be lawfully cited, unless he had been personally apprehended; and *præsunitur pro sententia*, and that *omnia* are *solemniter acta*; unless it were made appear by production of the execution, that the defender was not personally apprehended; and therefore the said reason of nullity was repelled; reserving action of reduction as accords.

Clerk, *Munro*.

*Fol. Dic. v. 1. p. 269. Dirleton, No 232. p. 110.*

1676. July 11.

STEVENSON against INNES.

No 145.

An inhibition was found null, because the execution bore not public reading of the letters and three

WILLIAM STEVENSON pursues reduction of a wadset granted to James Innes, as being after inhibition. The defender *alleged* absolutor, because the execution of the inhibition at the market-cross against the lieges is null, not bearing 'the public reading of the letters at the cross, and three several oyesses.' It was *answered* for the pursuer, That the execution bears, 'that the messenger lawfully inhibit the lieges,' which although general, is sufficient. *2do*, In for-