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.

1675. *January* 29. M'Intosh *against* M'Kenzie.

No 144.

A decreet 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 decreet could not be declared null and void, upon pretence of an intrinsic nullity; in regard the said decreet 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 *præsumitur pro sententia*, and that *omnia* are *solenniter 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* absolvitor, 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. 2*do*, In for-

No 145.
oyesses, tho' it bore that the messenger lawfully inhibited the lieges.

tification of the execution, he offers him to prove, that the letters were truly read, and three oyesses given. It was *answered* for the pursuer, *Non relevat*, because executions cannot be proven by witnesses in the substantials thereof; *ita est*, the substantials of an inhibition against the lieges, is a public reading of the inhibition with three oyesses; and horning has been found null upon an execution at a dwelling-house, because 'it bare not six knocks at the most patent 'door;' and in the case of Sir John Keith of Caskieben *contra* the Earl of Annandale, No 143, p. 3786, an inhibition against the party inhibited, was found null, because it did not bear a copy given, not being registrate with these words; although the messenger *ex post facto*, added upon the margin a copy given, and offered to prove the same truly given. It was *replied* for the defender, That sasines have been found valid of a mill, though not bearing, 'the delivery of the clap,' but only that 'sasine was given upon the ground of the mill, according to 'the custom in such cases.' It was *duplied* for the defender, That inhibition being an extraordinary remedy, according to our custom it requires a special execution, expressing the substantials of the act, and there is nothing so substantial, as the putting the lieges in *mala fide* to contract with the person inhibit, which can only be done by three oyesses, and public reading of the inhibition, which therefore cannot be supplied by witnesses.

THE LORDS found the execution of the inhibition null.

Fol. Dic. v. 1. p. 269. Stair, v. 2. p. 443.

*** Gosford reports the same case:

THERE being a reduction raised at William Stevenson's instance, against James Innes, *ex capite inhibitionis*, there was likewise a reduction of that same inhibition at the defender James Innes's instance, upon this reason, that the inhibition was null, wanting the ordinary and necessary solemnities, viz. three several oyesses, upon proclamation and public reading of the letters. It was *answered*, that the executions were opponed, bearing lawfully executed, which was comprehensive of all necessary solemnities. And in fortification, it was offered to be proven by witnesses, that the three oyesses were given, and the letters publicly read. It was *replied*, that the executions bearing no such thing, but only a general that 'they were lawfully execute,' are *ipso jure* null, as was decided by several practics, where the executions not being special, and bearing that copies of horning or citations were not delivered to the parties, or that executions or denunciations to the horn, not bearing after three several blasts, and six several knocks, were found null, and reduced, notwithstanding that they did bear that they were lawfully executed, and that these defences of supplying by witnesses have been constantly refused, as being against the act of Parliament declaring that hornings cannot be proven by witnesses, and for this were cited practiques, betwixt Sir John Keith and the Earl of Annandale, No 143, p. 3786; Farquhar against Lyon of Muresk,* and out of Haddington's practics.*

* *See* APPENDIX.

No 145. The Lords did reduce the inhibition, and found the reasons relevant and proven by the execution not bearing three several oyesses, and that the letters were publicly read and proclaimed; and albeit they did bear lawfully executed, it was not sufficient, nor could not be supplied by a new probation by witnesses, there being that same reason as to probation of inhibitions, as for hornings, being both of a public concernment; and to take away the rights of the subjects by depositions of witnesses, which might be craved after the messengers are dead who did execute, were an ill preparative.

Gosford MS. No 877. *p.*558.

1680. *November* 19. Hay *against* Lady Ballegerno.

No 146. Execution of an inhibition bearing 'several knocks, 'and that the 'party was 'lawfully in-'hibited,' was found null, for wanting 'six knocks.

John Hay as donatar to the recognition of the lands of Murie, pursues a declarator of recognition, wherein compearance is made for the Lady Ballegerno, who is infeft in a wadset in the lands of Powrie for 25,000 merks, and *alleged* that the recognition must be with an exception of her right, because before the disposition, upon which the recognition does not incur, her father had inhibited Murie, and she had raised reduction upon the inhibition, which she repeats, and craves the deeds on which recognition was incurred to be reduced, as posterior to her inhibition. It was *answered*, That the inhibition was null, not being executed personally, but at the inhibit's dwelling-house, and not bearing six knocks at the most patent door. It was *replied*, 1*mo*, That she opponed the inhibition, bearing several knocks, and that the party was lawfully inhibited; and albeit the act of Parliament requires six knocks, yet it is only in the case of citations, that the parties may be certiorated to appear and defend; but there is not a statute requiring it in inhibitions. 2*do*, The Lords have dispensed with greater solemnities, viz. three blasts with a horn in denunciations, whereof there are two cases observed by Durie No 113, p. 3765, and No 114, p. 3766, the messenger and witnesses proving that three blasts were truly given; the like is offered here, that six knocks were truly given. 3*tio*, There is here a new execution given in by the same messenger, bearing six knocks. It was *duplied* for the pursuer; that though there be no special statute anent the solemnities of inhibitions, yet the constant consuetude hath ever required it in all executions in absence, to prevent the cheat in citing in absence, upon pretence of close doors, and that therefore the law requires that six knocks should be given at the most patent door, that if it be opened, a copy might be given to the party or any of his family; and therefore a copy upon the door is left, in case after six knocks the door be not opened, but it is too frequent that these copies are carried off the door, and the party never comes to know. And as to the decisions in Durie, there are contrary decisions about that same time, which