No 156. Burnet to him, pursues Rochead to make furthcoming; who having deponed that he was only debtor to Burnet for the price of Inverleith, and that he had paid most of the price for satisfying the real burdens on Inverleith by infeftments and inhibitions, and that what remained he had paid after the loosing of the arrestment, the pursuer *objected* against a sum paid to one Howieson upon an inhibition, That it was no real burden, the inhibition being null, as being executed at the market cross of Edinburgh, and pier and shore of Leith, and yet bears not a copy left and affixed at the pier of Leith; and the Lords have found in the case of Caskieben and others, No 143. p. 3786. 'That deliverance or 'affixing of a copy is an essential solemnity in executions,' the want thereof annuls them; 2*do*, Payment, after the loosing of an arrestment, is not relevant, if voluntary, without process; 3*tio*, The loosing was upon finding a cautioner, who is neither known nor solvent, for which Mr Andrew Burnet, who attested the cautioner, is liable.

The Lords found the inhibition null, not bearing a copy affixed at the pier of Leith, but at the cross of Edinburgh; and found the voluntary payment, after the loosing of the arrestment, valid as to Rochead; but found Burnet, the attester of the insufficient cautioner, liable for the sums paid by Rochead after the arrestment was loosed.

Stair, v. 2. *p.* 864.

1683. *November.* Matthew Baillie *against* Mr Alexander Dunbar.

No 157.

Found, that the execution of a denunciation bearing three oyesses, did import open proclamation and public reading.

Fol. Dic. v. 1. *p.* 270. *Harcarse,* (Messenger.) *No* 686. *p.* 194.

1694. *February* 14. Morrison, &c. *against* Dempster, &c.

No 158.
An execution of inhibition was sustained, though it wanted three oyesses, it bearing public reading and *open proclamation*, which last imported three oyesses.

Rankieler reported David Morison, Sir Alexander Bruce of Broomhall, and the other creditors of Darsie, *contra* Sir John Dempster of Pitlever, and Patrick Steel, for reducing Mr Hary Blyth's inhibition on that estate, and his decreet of reduction obtained on that inhibition in 1675.——The Lords found in such reductions there was no necessity of citing authors, nor of calling the party inhibited and his heirs, but only him, who, contrary to the prohibition of the said inhibition, had received a right from the inhibited person; and so there was no need of calling Spottiswood's heirs in that process. Next, they found that no creditor compearing in that process of reduction pursued by Dr Blyth, *ex capite inhibitionis,* could be admitted now to quarrel and impugn the said inhibition, being there competent and omitted; but that a creditor or two, giving

in a bill in name of the rest, did not include the rest, unless they were also named; though some of the Lords argued, that it was *res judicata*, not only against the party called as defender, and his heir, but also against his creditors, though not called, else *res judicata* would signify little. It was yielded, that this held against personal creditors, but not against real creditors standing infeft. Then the Lords entered on the reasons of reduction against this inhibition, viz. That it wanted three oyesses, which, though required by no law, yet is introduced by a clear custom; and here were cited 11th July 1676, Stevenson, No 145. p. 3788.; and Lundy against Trotter, *voce* Proof.——The Lords, in this case, followed the last decision, and sustained Blyth's inhibition, in regard it bore there was open proclamation (which could be nothing but the oyesses to seek attention,) and then the public reading, especially being *in re tam antiqua*, viz. in 1640, that neither messenger nor witnesses were alive, to be examined if that solemnity of the three oyesses was used; and though they had, could not *post tanti temporis intervallum* remember such a circumstance.—Then it was *objected*, That by the 33d act, 1555, the messenger should demand entrance, or deliver a copy to the party's servants or wife, which this execution did not bear.——The Lords found this no nullity, seeing that presupposed the door was open; but where the door is found shut, he is only to knock six knocks, which was equivalent, and that was observed here.

Fol. Dic. v. 1. *p.* 270. *Fountainhall, v.* 1. *p.* 608.

No 158.

1708. *July* 20.

John Forbes of Knaperny, *against* Captain John Grant and Grant of Dalahaple.

No 159.
An execution was found good, though it bore that a —— was left, the word *copy* being omitted.

In a competition for Major Alexander Anderson's share in the African Company, betwixt Knaperny, who had intimated an assignation in his favours to the Directors, and Captain Grant and Dalahaple, who had arrested the same in the hands of the Company and Commissioners of the Equivalent, before the other's intimation, Knaperny *alleged*, That he ought to be preferred, because the executions of the arrestment bore not, 'that a copy was left at the African Company's office;' and though the messenger hath helped the executions, they cannot be sustained to his prejudice, having been once null by act of Parliament; for the deed of a messenger cannot take away a creditor's *jus quæsitum*, by supplying the nullity of an execution, after it is once *in judicium deductum*, and quarrelled.

Answered for the arresters; The executions are unquestionably valid; for they bear, 'this I did after the form and tenor of the said letters in all points, 'whereof I left a just for the said Directors and Managers, with their 'servants in their office,' &c.; and thereafter these words, 'the said copy bear-