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-

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 Ogil- ' vie'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 *authentics* 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.

No 161.

1752. *July* 17. Andrew Clerk *against* James Waddel.

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