

No 147. Queen Mary, Parliament 6, cap. 33. But the common stile of executions of denunciations mentions the delivery of copies to such as are personally apprehended.

*Harcarse (COMPRISINGS) No 268, p. 63.*

1682. February. Mr JAMES CUNNINGHAME *against* M'LEOD and HAMILTON.

No 148.

A MESSENGER'S execution of arrestment, bearing that the letters were duly and lawfully executed, but not that a copy was left, found null and informal, and second arrester preferred, albeit the said first arrestment mentioned that the person against whom it was executed, was personally apprehended.

*Fol. Dic. v. I. p. 270. Harcarse (ARRESTMENT) No 77, p. 14.*

1709. July 30.

CROMBY *against* ROBERTSON.

No 149.

An inhibition was sustained though the execution did not bear that a copy was delivered to the party inhibited, in respect it bore that he was duly and lawfully inhibited and personally apprehended.

JOHN CROMBY, sheriff-clerk of Roxburgh, pursues a reduction against James Robertson chirurgion in Jedburgh, for reducing a disposition of some lands made to him by one Scougal *ex capite inhibitionis*; against which Robertson excepted, that the inhibition was null, because, though the execution bore personally apprehended, yet it did not mention that a copy was delivered. *Alleged*, The inhibition was good, notwithstanding that defect; for being against him personally apprehended, law presumes *omnia fuisse solenniter acta*, and that a copy was given; and being duly published and registrated, that was sufficient to put him *in mala fide* to purchase; and, in a late case, No 159, p. 3805; where an execution bore the messenger had delivered a just and authentic, before the following witnesses, without saying 'copy' or 'double,' the LORDS found it an omission suppliable, and sustained the execution. *Answered*, The delivery of a copy was one of the most necessary and essential parts of an execution; and the 141st act, 1592, ordains copies of summonses, &c. to be delivered to the parties; and by act 75, 1540, the manner of the delivery of copies is there set down; and in executions against parties out of the country, a copy must be affixed on the market-cross of Edinburgh, and pier or shore of Leith. And Stair, p. 427, and 683, of his institutions, is most positive and express therein; and so is Hope, *Tit. Horning, Monteith contra Kirkwood*, No 93, p. 3754; and Durie, 24th December 1628, Potter *contra* Baillie, *voce* JUS TERTII, so that a personal execution will never suppose or presume the delivery of a copy. Neither can this defect be supplied by any other equivalent whatsoever; and where law or custom require a special solemnity, the want of it makes the deed null, *et quod nullum est nullos sortitur effectus*; and the publishing and registration does not supply the defect, for *bonum est ex integra causa, malum vero ex singulis defectibus*. *Replied*, There is no statute requiring the delivery of a copy where