

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 Ogilvie'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 *authentic*s 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.*

1752. July 17.

ANDREW CLERK *against* JAMES WADDEL.

No 161.

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