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

were shortly after the act of Parliament for registration of inhibitions, which have exceedingly altered the case, for all prudent purchasers do search the registers, and if they do find any defective inhibition registrate, they know it cannot be made up after, and so does surely proceed to acquire, and a stronger case was fully debated *in presentia*, in July 1671, betwixt the Laird of Caskieben and Sir John Keith, No 143, p. 3786; where an inhibition wanting these words, 'a copy delivered,' being so registrate, though the messenger added the words upon the margin and signed it, and offered to prove it was so done, yet the LORDS would not sustain the same. No 146.

THE LORDS found the inhibition null for wanting of the six knocks, being so registrate, and would not supply it upon any probation.

Fol. Dic. v. 1. *p.* 270. *Stair, v.* 2. *p.* 803.

1681. *November* 23. SANDERS *against* JARDINE.

IN the action of reduction pursued at the instance of James Sanders donatar in a gift of the *ultimus hæres* of James Monteith against George Jardine, wherein he craves an apprising deduced in *anno* 1653, against the said James Monteith, at the instance of Fullerton, from whom Jardine derived right, might be reduced upon this reason, that the comprising, and execution of the letters bear not, that there was a schedule delivered to the party, but only bore, that he was personally apprehended, and lawfully warned; which reason of reduction, THE LORDS found relevant to take away the comprising simply, albeit it was expired; in regard they found, that unless a schedule had been delivered to the party, he could not come prepared to the leading of the comprising, or know what sums he was to pay to the creditor, who intended to deduce the comprising, for himself, or as assignee by others. No 147.
An expired comprising was found null, because the execution bore not delivery of a copy to the debtor, but only that he was personally apprehended, and lawfully warned.

Fol. Dic. v. 1. *p.* 269. *P. Falconer, No* 3, *p.* 1.

*** Harcarse reports the same case:

THE LORDS reduced an apprising *simpliciter*, and would not sustain it as a security for the principal sum and annualrent, upon this ground, that the execution of the denunciation of the lands did bear only that the debtor was lawfully warned, conform to the will of the letters, personally, and not that a copy was delivered; because, as in absence, copies ought to be left at the dwelling-house, so copies ought to be delivered to the party, when personally apprehended; and the execution ought to bear expressly, that copies were left, which was not found imported by the general of 'lawfully warned,' although we have no positive act appointing copies to be delivered to parties apprehended personally in civil actions, as there is for delivering of copies in criminal causes,