

DIVISION VII.

Clauses implying or importing particular legal steps of execution.

1626. *July 22.*STUART *against* ACHANAY.

IN a declarator betwixt Stuart and Achanay, the horning whereupon declarator was sought was alleged to be null, because the charge bore not 'that the party was either charged personally, or at his dwelling-place;' and whereas the charge bears, 'that the messenger delivered a copy to the party charged,' that ought not to sustain the charge, seeing the same could not be found lawfully executed, except the messenger had expressly set down in his execution, 'that he charged him personally apprehended,' no more than an execution could be found lawful, where the charge bears not, 'that the messenger had affixed his stamp thereto,' albeit the stamp was affixed thereto. This allegation was repelled, and the horning found sufficient, bearing, 'that a copy was delivered to the party,' which could not have been, but by a charge given to him personally apprehended.

Act. ———.

Alt. *Belsbes.*Clerk, *Scot.**Fol. Dic. v. 1. p. 270. Durie, p. 224.*

No 155.
An execution of charge, which bore that the messenger delivered a copy to the party, was sustained, as implying personal execution.

1681. *February 22.*JOHN EWING Merchant in London, *against* MR JAMES ROCHEAD of INVERLEITH.

THE LORDS found an inhibition served against Mr Thomas Burnet, Mr James's author, null, because the publication bore not a copy left at the pier and shore of Leith, (Thomas then biding in Holland,) though it bore these words, a copy left at the market cross of Edinburgh, before these witnesses, at the market cross and pier and shore of Leith respective, conform to the tenor of the letters, which the LORDS found not to be equivalent.

Fol. Dic. v. 1. p. 270. Fountainhall, MS.

** Stair reports the same case :

JOHN EWING, merchant in London, having arrested in the hands of Mr James Rochead all sums due to Mr Andrew Burnet, for satisfying of sums due by