No 25. of the parties, the Lords, by voting it over again, ordained it to be signed *in præsentia.*

The Lords sustained this nullity of the decreet, that the decerniture or warrant thereof was not signed by the Judge; and therefore reduced the same.

Fol. Dic. v. 1. *p.* 204. *Forbes, p.* 265.

SECT. VI.

Informal execution.—Term of entry.—Sentence-money.

1624. *June* 17. Crawford *against* Wood.

No 26. A decree was found intrinsically null, without reduction, because the execution of citation wanted witnesses, although such executions were customary.

In a suspension betwixt Crawford and Wood, the Lords found a decreet given by the Provost and Bailies of Edinburgh, which was suspended then, to be null summarily, without reduction; because the same was given against the suspender, as holden as confest, being summoned to give his oath by one of the town officers, and his execution having no witnesses, in respect whereof, that citation was found could not be sustained, and the decreet therefore was null; albeit it was *alleged* against the suspender, that the form within the burgh of Edinburgh, was, that executions made by their officers, were made without witnesses, and that the officers were sworn in judgment, upon the verity of their executions; which form the Lords would not allow, because thereby the ordinary mean of improbation, viz. by the witnesses, was taken away.

Clerk, *Scot.*

Fol. Dic. v. 1. *p.* 204. *Durie, p.* 129.

1626. *July* 25. Dickson *against* Anderson.

No 27. Found as above, where the custom was to cite parties without any written execution.

In a reduction betwixt Dickson and Anderson of a decreet obtained before the Bailies of Dumfries, decerning Dickson to pay 500 merks, being referred to his oath, and not compearing, &c.,—this decreet being desired to be reduced, because he was never warned by any officer to compear; and the executions being called to be produced, and to be improven in this process, the defender compearing, and *alleging*, that in their burgh-courts their custom was to command their town-officers to pass and warn parties to compear before them, and

to give their oaths upon the claims referred to their oath; and that there used no writ to be made upon their officers warnings, and no execution in writ was usually produced by the officers, but only they compeared in judgment, and made relation to the Bailie, that they had warned the party, either personally, or at his dwelling-place, and upon his report decreet was given; so that for not production of their officers' execution the sentence could not be reduced. This allegeance was repelled, and this custom was found not to be allowable, for thereby the ordinary means, to try the verity of the officers' warning of parties, and the way to improve the same, was taken away, which ought not to be permitted, and to give therein more trust to the relation of a messenger or officer, than is due to him, and which ought not to be: So the LORDS found, that in such citations and warnings made by town-officers, the least that could be done in any lawful process, proceeding judicially thereupon, by the magistrate of burgh was, that when the officer made his report in judgment, that thereupon a note should be made by the town-clerk in writ, bearing, 'That such an officer made such a report in judgment, viz. That he upon such a special day 'warned the party, either personally or otherways according as he happened to 'do, to compear in such a cause, and before such special witnesses named and 'designed;' which report in writ the LORDS found ought to be extant, and made furthcoming to all parties, when the process should be called in question, or the saids executions called to be produced by the parties having interest; and which being so extant and exhibit, the LORDS found might supply the production of any precept, or executions of officers called for to be produced.

No 27.

Act. *Belshes.* Alt. ———. Clerk, *Gibson.*

Fol. Dic. v. 1. *p.* 204. *Durie, p.* 227.

1633. *July* 20. BROWN *against* MAXWELLS.

No 28.
Where access to a house or chamber, set in tack, is required ten days after the agreed term of entry, but not given for 20 days, so that the tacksman comes to be obliged to take another lodging, he is free from the tack, and cannot be obliged to pay the rent, tho' it be proved, that by the custom of the place, entry to the possession of

MR ROBERT BROWN charges Mr William and Patrick Maxwells, for payment of the mail of a chamber set to them, conform to a contract made betwixt them; who suspending that they cannot pay the duty, as that contract obliges them; because by that contract the charger is obliged to enter them precisely at Whitsunday to that chamber; and it is true, that ten days after Whitsunday, by instruments they required him to enter them thereto, which was not done, but the possession still retained by him, who possest it about 20 days thereafter; so that it being a month after the term ere the house was made void, they were forced to take another chamber; being in the time when the King was in Scotland, where they had a necessity of a chamber to ease their friends who came home with him; and therefore they ought to be free of this tack. And the pursuer opponing the contract, and that it is not the custom of the town, to remove so precisely at the term; and it is no reason that for so usual delay in removing, this tack should be made void, and he so heavily pre-