

S E C T. IV.

Decrees, Acts of Court, &c.

1618. *January 10.*MUIRHEAD *against* CLELAND.

No 404.

IN an action of wrongous intromission, pursued by Muirhead of Lochope against Alexander Cleland, for a brown horse, the LORDS found an exception relevant upon a decret absolvitor pronounced by the Commissary of Glasgow, where the defender was pursued for the horse as lent, and the matter referred to his oath, which the LORDS found relevant to elide this new action and probation thereof by witnesses, except he would also refer this new libel to his oath.

Kerse, MS. fol. 256.

1622. *February 13.*ORR *against* WADDELL.

No 405.

THE LORDS found, that a decret given by the D an of Guild of Edinburgh, decerning Gilbert Waddell to deliver 17 pocks of — to John Orr upon his own confession, was null, unless the debt were otherwise verified nor by the confession contained in the decret, because it was not subscribed by the party, who could write.

Fol. Dic. v. 2. p. 247. Haddington, MS. No 2597.

1626. *December 23.*PEEBLES' RELICT *against* TOWN of PERTH.

No 406.

IN an action pursued at the instance of the Relict of umquhile Mr Alexander Peebles, as executor to him, against the Provost, Bailies, and Council of Perth, for payment of a sum of money addebted by him to the said Mr Alexander, conform to an act subscribed by the Town Clerk, bearing them to be resting owing the said sum, as borrowed from the said Mr Alexander, and which they obliged them to pay to the said Mr Alexander at the term therein contained; this act being quarrelled, because it was not subscribed by the Provost and Bailies and Council, but only by the Town clerk, which ought to work no further than if it had been subscribed by a Notary, and so was not sufficient to produce action against them for payment of the sum of L. 400 libelled; likeas, the party *alleged*, That the Lords had found, that the like acts made by the Clerks, subscribed by them, whereby other persons were acted to pay sums to their credi-

An act of council, in which the magistrates owned themselves debtors, not subscribed by them but by the clerk, found obligatory.

No 406.

tors, were not obligatory against the parties acted without their own subscription: This allegiance was repelled, and the act was found sufficient, albeit not subscribed by the Magistrates and Council of the town, who were parties obliged, but only by their Clerk, seeing it was an act judicially done, and registrated in their court-books, and that the pursuer offered to prove, that at the time of the making of this act, the Magistrates and Council of Perth were in use to act themselves after this manner, and to grant obligations to diverse parties, by acts only subscribed by their Town Clerk, as this act was, and not to oblige themselves by their own subscriptions, and that these acts so made have taken effect and been satisfied by them, it being their custom to bind themselves after that manner at that time; which reply the LORDS found relevant to maintain this act and pursuit libelled founded thereon; neither were the Lords moved with the alleged practices, whereby acts made and subscribed by the Town Clerk, wherein other debtors were obliged to their creditors, were found null, as not being subscribed by the persons thereby obliged, because there was difference in obligations made by one party to another, in which deeds the Clerk could have no other respect than as due to another common Notary, whose subscription could not bind the debtor, whereas the case is otherwise when the Town bind themselves to a party, and where the Clerk in these cases is their public officer and their servant, and where they were in use to bind themselves effectually to others after that same manner.

Act. —.

Akt. Chair.

Fol. Dic. v. 2. p. 249. Durie, p. 253.

No 407.

1628. *March 26.* LORD LOVAT *against* SHERIFF of NAIRN.

A SHERIFF having caused a person enact himself with a cautioner to compear before the Justices, and underlie the law for murder, under a penalty, this was not found probative, not being subscribed by the party.

*Fol. Dic. v. 2. p. 249. Durie.** * * This case is No 367. p. 766I. *voce* JURISDICTION.

No 408.

1635. *January 22.* BELL *against* L. Mow.

An act subscribed by a sheriff-clerk only, bearing that a wife had judicially ratified a deed, found

THE L. Mow having wadset his lands to one Bell, who setting the lands in back-tack for payment of a back-tack duty, and after the decease of the L. Mow, arresting the duties of the lands in the tenants' hands, and pursuing them thereupon to make them forthcoming, Nisbet, relict of the Laird Mow, who was liferenter of the lands before the wadset, compearing, and defending with her said right, the pursuer *replying*, that she had consented to the contract of