

No 22. bygones, *error communis* may so far excuse such an error. THE LORDS having tried at the town clerk, and having found there were many in the same condition, they sustained the sasine and resignation, and repelled the nullity; but resolved to make an act of sederunt discharging that practice in time coming, under the pain of nullity, in all competitions with other creditors, more formally infest.

*Fol. Dic. v. 1. p. 203. Fountainball, v. 2. p. 428.*

SECT. V.

Process carried on in a wrong form.

No 23.  
A decree of lining given by the provost and bailies of Dumfermline was reduced, because the brieve was not proclaimed upon 15 days, nor a precept directed upon a claim given in by the purchaser of the brieve against the special parties having interest, nor any formal order of process kept, tho' it was alleged to be conform to the ordinary custom and manner of proceeding in that burgh.

1629. February 14.

WRIGHT against STIRK.

IN a reduction of a brieve of lining or limiting, and decret conform thereto, given by the Provost and Bailies of Dumfermline, to whom the brieve out of the chapel of Dumfermline was directed to that effect; this reason of reduction was found relevant, and the brieve was reduced, because the brieve was not proclaimed upon 15 days, not a precept direct upon a claim, given in by the purchaser of the brieve against the special parties, having interest in the lining of the tenement therein contained, for summoning them thereto, nor no formal order of process kept; which reason was found relevant, albeit the defender contended, it was not relevant in this case of brieves of lining, which hath a summary proceeding; and that by the consuetude in the burgh of Dumfermline, no other claim is given in but summary trial taken betwixt the parties; likeas the parties are summoned by the brieve and warrant thereof; which exception was repelled.

Act. Mowat.

Alt. ———.

Clerk, Gibson.

*Fol. Dic. v. 1. p. 204. Durie, p. 425.*

No 24.

Decree subscribed by the commissary in place of the clerk sustained, because of the custom, but

1631. February 10.

A. against B.

THE Commissary of Brichen having pronounced a decret betwixt two parties, which being extracted, was subscribed by the Commissary, who was judge thereto, and not by his clerk, and therefore was quarrelled as null, seeing these being two distinct offices, as the clerk could not be judge, no more could the judge be clerk; for, as the judge could not sit down and minute processes, and