

No 577.

paid for, lying in the clerk's hands, and never signed, nor taken out. And to allow the marking of a decret by a servant, without any public authority, for the clerk's private use and conveniency, to supply or make up the tenor of a formal writ, is a stretch and absurdity to be exploded.

Duplied, It cannot be inferred that the decret was never extracted from its not being booked, seeing many decreets at that time were never booked, nor the warrants carried to the laigh Parliament House, which was not so ordinary twenty-seven years ago as now; and yet extracts have been taken out conform to such old warrants as are yet in the clerk's hands. Now will any man say, that the not booking, or not transmitting these warrants to the low Parliament House, should so prejudice one that hath lost his first extract, that he cannot take out a second at any time.

THE LORDS found no sufficient probation that there was a decret extracted, and allowed parties to be heard *in causa*.

Fol. Dic. v. 2. p. 264. Forbes, p. 22.

SECT. V.

Marriage.

No 578.

1611. July 5.

BARCLAY *against* NAPIER.

THE LORDS sustained a relic's process upon her contract of marriage, licet matrimonium nunquam fuerat in facie ecclesiæ celebratum.

Fol. Dic. v. 2. p. 267. Forbes.

*** This case is No 329. p. 6115, *voce* HUSBAND AND WIFE.

No 579.

1714. February 23.

MIS JEAN ANDERSON *against* NINIAN WISHEART of Logie.

In a process at the instance of Mrs Jean Anderson *against* Wisheart of Logie, for kenning her to a terce of lands wherein the deceased Captain James Wisheart, whom the defender represents as heir, died infest, upon this ground, that the pursuer was lawful wife to the Captain; she having produced a letter writ by him to the Lady Cartwright, signifying, that he had writ to her without