

No 22.

No nullity in lawburrows, that the letters did not command the messenger to take the party's oath that he dreaded bodily harm, and that the oath was not taken.

1627: December 7. L. CLACKMANNAN *against* L. FINGASK.

IN a contravention betwixt Clackmannan and Fingask, the LORDS found no necessity that letters of lawburrows should contain a charge and command to the messenger, executor thereof, to take the oath of the party at whose instance the charges were to be executed, that he dreaded bodily harm of the party to be charged; and that the letters and charges of lawburrows might be sustained, albeit they bore no such command within the body thereof, and albeit the messenger executor took no such oath; and found that the omitting of that clause in letters, and the officers not taking of the party's oath, was no cause to make the act of cautionry to cease, which was found by the party for obedience of the charge, or to infringe the force of the letters of lawburrows, as if they had been null for that effect; but if the party charged had suspended the charge, and desired the charger's oath foresaid, before he had found the caution, he would not have been compelled to have found the caution, until the time the other party had given his oath. But this decision upon hope of agreement was not pronounced.

Act. *Hope.*Alt. *Aiton & Hay.*Clerk, *Hay.**Fol. Dic. v. 1. p. 533. Durie, p. 318.*

No 23.

1628. July 8. SEMPLE *against* CUNNINGHAM.

IN a contravention, John Semple *against* Cunningham, the LORDS sustained the pursuit, only founded upon a charge given by the pursuer to the defender, to find caution of lawburrows, albeit no horning followed thereupon; but it was sustained, because the pursuer *replied*, that before the deed libelled, whereupon contravention was craved, the defender had found caution, conform to the charge, and he pursued not the cautioner, but the principal party, who was charged; which reply was sustained with the summons, albeit the libel was not founded upon the said act, but only upon the charge.

Act. *Nicolson.*Alt. *Cunningham.*Clerk, *Gibson.**Durie, p. 385.*

No 24.

1628. July 9. A. *against* B.

A party being charged to find lawburrows and find caution, although he enter in friendship and familiarity with the party charged, yet thereby the lawburrows are not discharged, except it be expressly by writ; and in case the