write his own ordinances, no more could he subscribe decreets; notwithstanding whereof the decreet was sustained, seeing it was the custom of that court, and divers other inferior judicatures to do the same; but the LORDS found it a custom unlawful, and not to be hereafter allowed, and ordained the Commissary to abstain therefrom in time coming.

No 24. the custom found not right, and therefore not to be sustained in time coming.

Fol. Dic. v. 1. p. 204. Durie, p. 567.

1708. *July* 15.

GEORG HOUSTOUN, and his TUTORS and his CURATORS, *against* LORD ROSS.

No 25. An admiral's decree in absence for not finding caution *judicio sisti et judicatum solvi*, found null, and turned into a libel, on this ground, that the decerniture or warrant thereof, was not signed by the judge, notwithstanding that, by custom of the court, the judge had not for a long time signed any such decernitures.

GEORGE HOUSTOUN having raised suspension and reduction of a decreet in absence, obtained by the Lord Ross before the Admiral, against the deceast Patrick Houstoun the pursuer's father, upon this ground; That the same was null for being extracted without the warrant of a decerniture signed by the Judge, contrary to the act 3d, Parliament 1686, and might have been of the clerk's manufacture;

Alleged for my Lord Ross: The custom of the Admiral court requires no decreets in absence to be signed by the Judge, but only decernitures upon debate; and the customs of particular places derogate even from a general custom, witness December 14. 1671, Duff and Brown *contra* Forbes of Culloden, *voce* PROOF; and the case of Ross of Tullisnaught *contra* Turner.

Answered for the pursuer: The argument from the custom of the Admiralty is most irrelevant, unless they pretend a power of dispensing with acts of Parliament. For though it be not necessary for a Judge to sign ordinary steps of process, such as continuation of diets, orders about seeing and returning, or production of writs, whereupon nothing is to be extracted; the Judge's interlocutors for an act or decreet, is an indispensable check upon the clerk, any contrary custom notwithstanding. Because indeed, *consuetudinis usúsque longævi non vilis est auctoritas, sed non usque sui valitura momento, ut rationem vincat aut legem.* So custom did not sustain an unwarrantable adjection to a tax-roll, December 15. 1666 *. Laws concerning the public good and regulation cannot run in desuetude, Jack *contra* Town of Stirling, No 3. p. 1838. Yea, the town of Edinburgh's decreet as patrons, against Mr Andrew Massie a professor of philosophy in their college, was reduced, for that some of the interlocutors were not signed; and the commissary of St Andrews's subscribing only the docquet after all the depositions of witnesses, was found to annul the decreet extracted thereon. The decision, December 14. 1671, concerns only the special set of a particular burgh, which differs in different burghs. Nor is that betwixt Ross of Tullisnaught and Turner any more to the purpose; for there the interlocutor not having been signed when pronounced, in expectation of agreement

* L. Colvil against Feuars of Kinross, Stair, v. 1. p. 413, *voce* PUBLIC BURDEN.

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