

ses null and informal, and not probative, till they were led of new before the Lords, upon getting up their former depositions ; and likewise found this paction of the nature of a promise, and so not probable by witnesses, but only *scripto vel juramento*. See PROOF.

No 19.

*Fol. Dic. v. 1. p. 553. Fountainhall, v. 2. p. 191.*

1709. January 4.

MAVOR *against* STEWART.

IN a case betwixt Mark Mavor and Stewart, it being *alleged* the decret was null, because it bore not personally apprehended ; and it being *answered*, That the sheriff-mair offered to depone, that it was done personally ; *replied*, Executions are not to be made up in that manner, but must be in writ ; and messengers only depone on the verity of their executions in cases of treason, and serving of brieves. THE LORDS repelled the nullity, in regard the officer gave an execution bearing personally apprehended, and offered to abide at the truth of it.

No 20.

*Fol. Dic. v. 1. p. 552. Fountainhall, v. 2. p. 478.*

1709. February 26.

WILLIAM JUNKISON, Tenant in Newtongrange *against* the LADY ARDVORLICK.

IN the cause at the instance of William Junkison, against the Lady Ardvorlick, the execution of a wakening of the process being quarrelled as null, for that the defender's house was not designed ; and William Junkison having afterwards produced another more formal copy of the execution, wherein the dwelling-house was expressly designed ; the Lady *alleged* that the execution first produced and given out in the process being null, the messenger could not supply the defect thereof, either by a new execution, or by amending the old one.

THE LORDS repelled the objection, and sustained the new execution, in respect Junkison offered to abide by the same ; albeit such mending of an execution of horning, whereof the conclusion is penal, inferring the confiscation of one's whole effects, would not be allowed.

No 21.  
Execution of a summons being objected to, because the defender's dwelling-house was not designed, the pursuer was allowed to produce another more formal execution.

*Forbes, p. 329.*