1685 *January.*

Sir Adam Blair *against* The Creditors of William Rigg.

No 15.

An inhibition executed at Musselburgh, the head-burgh of the regality where the lands lay, and at the market-cross of Edinburgh, as use is, being quarrelled, for that the execution bore copies to be left at the said burgh of Edinburgh, without mention of Musselburgh;

It was *alleged* for the defender; That it was but a mere omission; and it was offered to be proved by the messenger and witnesses, that, *de facto*, a copy was left at Musselburgh.

The Lords found the execution null, and would not supply that defect, it not being so in the register.

Fol. Dic. v. 2. *p.* 213. *Harcarse*, (Inhibition.) *No* 738. *p.* 176

1714. *June* 25. Haswell *against* Magistrates of Jedburgh.

No 16.

In an action against Magistrates for refusing to obey a charge given them to apprehend a rebel, the Lords assoilzied, because there was no execution of the charge given by the messenger, though there was produced in process a notorial instrument, bearing the fact, and also the letters of caption, with a note under the messenger's hand, bearing that the charge was given as narrated in the instrument; and the pursuer offered further to adminiculate all by the instrumentary witnesses.

Fol. Dic. v. 2. *p.* 212.

*** This case is No 63. p. 11733. *voce* Prisoner.

SECT. II.

What Proof relevant to support Defective Writs.

1579. *March* 14. Nairn *against* Sutor.

No 17.

There was a contract desired to be registered betwixt one David Nairn and one Patrick Sutor, which contract was subscribed by both the parties with their hand writs, that could not write, led by a notary. In the same contract, there were sundry places upon the margins, which were not in the body of the contract, and also interlined in sundry parts: Therefore, this Nairn summoned

Sutor to hear and see the said places verified by the notary and witnesses inserted in the said contract. It was *alleged* on the contrary, That no witness ought to be received thereupon; because, the said contract contained in it infeftments and reversions of lands, which ought not to be proved by witnesses; and the matter appeared to be very dangerous to admit probation, which required solemn and authentic writ to be proved by witnesses. THE LORDS, for the most part, pronounced by interlocutor, that they would not receive the notary and witnesses to verify the clauses that were contained in the margin, and so would neither register nor admit to probation the notary and witnesses inserted in the clauses contained in the margin. No 17.

Fol. Dic. v. 2. p. 214. Colvil, MS. p. 281.

1610. *November* 23. MELVILL *against* MURRAY.

A MAN pursuing the maker of a bond to him, to deliver the bond as his evident, because it being subscribed and delivered to him, he gave it back again to the maker to get it subscribed by cautioners, and offering to prove the summons by four Lords of the Session, being *testes omni exceptione majores*;—the LORDS inclined to admit that probation, albeit the defender contended, that no probation could be received, but writ or oath of party. No 18.

Fol. Dic. v. 2. p. 216. Haddington, MS. No 2007.

1611. *November* 28. HOWIESON *against* HOWIESON.

IN an action betwixt Howieson and Howieson, the LORDS fand, that a reposition made by the mother to her own son, being all written with her own hand, and wanting witnesses, could not prove against a third party, who had acquired the mother's right. No 19.

The like betwixt the Lo. Forbes and Marquis of Huntly.

Kerse, MS. fol. 260.

1626. *March* 29. KEITH *against* ROBERTSON.

IN an action betwixt Keith and Robertson, an assignation being made by one who was bankrupt to his creditor pursuer, which being intimated to the defender, who was convened for the debt, and the defender offering to improve the same, as false in that date whereof it was when it was produced; and the pursuer *answering*, That that imporbation of the date ought not to be admitted to

No 20.
An assignation of a false debt found null *in toto*, and no proof of the time of intimation allowed.