

No 413.

THE LORDS found that this naked testament was not sufficient to astruct the acceptance without further adminicles.

*Fol. Dic. v. 2. p. 248. Stair, v. 1. p. 261.*

No 414.

A decree bore only that the defender compeared and confessed. The decree found null.

1665. July 19.

RYCE GUM *against* M'EWAN.

RYCE GUM having obtained decret before the Bailies of the Canongate against M'Ewan, to repon him to an assignation, he suspends on this reason, That the decret was null, wanting probation, proceeding only upon the alleged judicial confession of the suspender without proponing any defence, acknowledging the libel, and succumbing in the defence, but simply confessing the libel, which cannot prove against him, being under the hand of a clerk of an inferior court only, without the suspender's subscription or oath.

Which the LORDS found relevant.

*Fol. Dic. v. 2. p. 247. Stair, v. 1. p. 300.*

No 415.]

1671. February 8.

LAURIE *against* GIBSON.

A DECREE of session, bearing to proceed upon consent of parties judicially interposed, was found null, in regard it did not bear that the parties had subscribed their consent.

*Fol. Dic. v. 2. p. 248. Gosford.*

\* \* \* This case is No 5. p. 5622. *voce* HOMOLOGATION.

No 416.

A decree of an inferior court suspended, as it did not bear that the defender's oath was subscribed by himself.

1672. November 21.

CARIN *against* WILSON.

THERE being a decret of the Bailies of Edinburgh betwixt James Carin and James Wilson, wherein the defender was decerned upon his oath; which decret being now suspended, and craved to be reduced upon this reason, That the oath was not subscribed by the suspender, nor did not bear that he did declare that he could not write, and the truth is, that he having deponed, the clerk wrote his oath disconform to his meaning, whereupon he refused to subscribe it; it was *answered*, That the oath was subscribed by the Bailie, and the sum was small.

THE LORDS found, That the oath should have borne that the party declared that he could not write, or else should have been subscribed by him, or otherwise should have been holden as confessed, if he refused to depon or subscribe.