

EXECUTIONS.

1769.

ORROCK *against* PETER.

ORROCK having obtained decret of removing before the bailies of the Canongate against Peter, Peter suspended, and *inter alia* pleaded, That the execution of citation on the summons was null, not having subscribing witnesses, nor indeed bearing that any witnesses were present; contrary to the statute 1686, c. 4. Pleaded in defence, That, notwithstanding of the statute, a contrary practice had prevailed in the inferior Courts of Scotland, and particularly in the Bailie Court of the Canongate: that, by the law of Scotland, practice, if universal and uniform, is sufficient to repeal a statute; and though not so universal nor uniform as to have this effect, yet might be sufficient to sanctify a practice, though erroneous, as to bygones, until that, by an Act of Sederunt, or other proper method, the error was corrected *in futurum*. The Lords therefore, before advising, ordained the parties to give in certificates, or other legal evidence of the practice. And these being given in from the Bailie Court of Canongate, and the sheriff and Bailie Court of Edinburgh, and found in general to agree with the directions of the statute, the Lords sustained the reasons of suspension, and suspended the letters *simpliciter*.

1777. March 5.

FALCONERS *against* SMITH.

EXECUTIONS, signed blank, by the executor and witnesses, are declared void by the Act of Sederunt, 24th July 1704. It occurred in the case of Falconers against Smith, (mentioned under *Removing*,) whether this Act of Sederunt extended to executions of summonses by any other than messengers-at-arms; for, although the enacting words of the Act are general, and reach to all executions, yet the penalty seems confined to messengers, and therefore the Act may be supposed to relate to them only: further, it was alleged, that this practice still prevails in inferior courts, particularly Sheriff-courts, where blank executions, that is, executions signed blank by the witnesses, sometimes before the officer signs them, and sometimes when he signs along with them, are in daily use; owing to this among other reasons, that many of the officers of these courts, though they can sign their name, cannot write out executions; but, after signing their executions, and getting them signed by the witnesses, leave them to be filled up by others.

It so happened, that, in this case of Falconers against Smith, a decision upon this point was unnecessary; at the same time, the Lords expressed their disapprobation of the practice, (17th January 1777.)

When the complaint came again before the Court, on a reclaiming petition, although still a decision upon this particular point was in this case unneces-