

especially seeing nothing was concluded against the judge for wrong done, nor no reason libelled thereon, and that the party ought to be answerable for the warrant of his own sentence; especially the Baron's self being the obtainer thereof, in his own court, before his own Bailie, the members of the court being of his own creation. *Item*, The defender offering to prove against the reason of reduction, that the defender in that decret, viz. the tenant, was summoned to the giving thereof, and that he offered to prove it by witnesses; the LORDS found this allegiance relevant to sustain the decret, and that it was relevant to be proven by witnesses, and that there was no necessity to prove the same by writ; for in such acts and procedures, before Baron Bailies, in Baron Courts, the LORDS found no necessity that there should be any citation extant in writ, seeing the citations in such courts are frequently done by verbal direction, and if it can be proven that the tenants be truly cited, albeit not in writ, it is sufficient.

No 137.

Act. *Advocatus & Mowat.*

Alt. *Nicolson & Baird.*

Clerk, *Hay.*

Fol. Dic. v. 1. p. 269. Durie, p. 725.

1634. July 18.

HART against TENANTS.

MR JOHN HART, pursuing a removing from a house in the Canongate, conform to a warning, as use is, made within burgh; it being *alleged*, That the warning was null, because it was not execute upon 40 days at the parish kirk within which the house lies; the LORDS repelled the allegiance, and sustained the warning; because they found, that warnings from houses within burgh needed not to be made nor executed at the parish kirk; seeing that is only required by act of Parliament to be done in field land; and not for houses in towns, from which warnings to remove are made by the town officers, at the verbal desires of parties, without necessity of precepts in writ from the party, or any other direction from the Magistrate, and by chalking of the doors, testified to be done by the officer executor, and witnesses, without any record of the execution in writ.

No 138.

Verbal warning at a house within burgh is valid, without a written execution or publication at the parish church.

Clerk, *Scot.*

Fol. Dic. v. 1. p. 269. Durie, p. 729.

1637. March 22. FINNIE in Peterhead against GRAY.

ONE Finnie, by a precept from the Earl of Marshall, as admiral-depute, having caused arrest a ship in Peterhead pertaining to Andrew Gray, for satisfying of a debt owing to him by the said Andrew, and pursuing before the Lords upon that arrestment, to make the ship furthcoming, the debtor's son, who intromitted with the ship; wherein the Lords sustained this action pursued before

No 139.

Arrestment of a ship good, if intimated personally to the possessor, though the

No 139.
 officer neither
 take the sails
 nor rudder
 from the ship,
 nor leave a
 copy of the
 arrestment
 affixed to the
 ship.

themselves, upon an arrestment direct, and executed by warrant of the precept of an inferior judge, viz. the admiral-depute; and the said arrestment so executed was sustained, albeit it was quarrelled as unlawfully executed, not bearing, to be stamp, and not bearing, that the officer took the sails from the bark, and the rudder from her, all which are necessary formalities in arresting of any ships, and omitted, albeit the warrant of the precept directed the same. *Item*, No copy delivered to the party, nor left or affixed upon the ship; which objections were repelled, seeing the pursuer offered to prove, that the officer intimated to the debtor's own son, that he had arrested the ship immediately after the doing thereof; and which intimation, so made, the LORDS found probable by witnesses, and the officer, and that it was not necessary to prove it by writ, or by oath of party.

Act. ———.

Alt. *Mowat*.

Fol. Dic. v. 1. p. 269. Durie, p. 842.

No 140.

1694. July 19.

M'KEAN, &c. against ———.

HALTON reported the case of M'Kean, &c. about a decret of the Sheriff of Ayr, which was quarrelled on this nullity, that he was not cited, and that there was no execution in writ; and the decret itself bore, that the sheriff-officer only verified his verbal execution in face of court. THE LORDS turned the decret into a libel; for though of old, when writing was not so frequent, verbal citations were allowed, (as they are to this day in Baron-courts), yet now, since almost every body are taught to read and write, and that the late acts of Parl. 1681 and 1693 require subscribing witnesses to executions of messengers, such verbal citations cannot be sustained.

Fol. Dic. v. 1. p. 271. Fountainball, v. 1. p. 634.

S E C T. XI.

Execution returned Blank to the Party.

No 141.
 An execution
 was signed
 by the mes-

1700. January 9.

ABERNETHY against OGILVIE.

ARBRUCHEL reported Abernethy of Mayen against Ogilvie of Badintowl, for payment of a debt contained in his father's bond. *Alleged*, The execution is