EXECUTIONS.

1769. ORROCK *against* PETER.

ORROCK having obtained decreet 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-

sary; the Lords, (5th March 1777,) called the Sheriffs to the bar, and recommended to them to prepare an act for correcting this erroneous practice in time coming. In this case, the witnesses had signed the execution blank before it was filled up or signed by the officer.

EXPENSES.

1776. *June 25.* WILLIAM PORTER *against* DAVID THOMSON of INGLISTON.

WHERE a multiplepoinding is raised emulously without necessity, and with a view to protract or raise unnecessary litigation; the Lords not only refuse to allow the pursuer the expense of raising it; but, in particular cases, find him liable in expenses to the other party. So they did, 25th June 1776, William Porter against David Thomson of Ingliston; although the multiplepoinding, in this case, was brought in consequence of an interlocutor of an Ordinary sisting process until that was done: Because, in pronouncing that interlocutor, it appeared that the Ordinary had been misled by the party.

SIR JOHN GORDON *against* FORSYTH.

IT has been maintained, that, in no case where penalties are imposed by law, are costs ever given, unless where special statute orders them to be paid. The Lords found the contrary, Sir John Gordon *against* Forsyth, where Forsyth, having acted as commissioner of supply, without a qualification, was found not only liable in L. 20 of penalty, but also in expenses, though the act imposing the penalty did not mention costs.

M'ADAM of CRAIGINGILLIAN *against* LOGAN of KNOCKSHINNOCH.

AT a meeting of the commissioners of supply for the county of Ayr, 29th April 1775, Logan of Knockshinnoch, though possessed only of L. 83 : 13 : 4 of valuation, appeared and voted, first, who should be clerk to the commissioners; and, secondly, Whether or not his salary should be diminished.

In a complaint against him at the instance of John M'Adam of Craigingillian and Others; Mr Logan rests his defence upon his mistake in point of law, having been informed that L. 20 sterling of real rent, which he had, was equal to L. 100 of valued rent; and contended that no more, at any rate, than one