

No 420. sertation of the clerk of Forfar, consequently the decret ought to be turned into a libel;

THE LORDS sustained the decret on the said probation, the decret not being for a debt, but having proceeded upon a complaint against the defender for abusing the Provost, adhered to and owned by the defender in face of the Court, as the decret bore; but the LORDS assoilzied from that part of the sentence taking away his burgess-ship, and decerned for the L. 40.

Fol. Dic. v. 2. p. 247. Harcarse, (PROBATION.) No. 782. p. 221.

No 421. 1684. November. FALCONER against KENNEIR.

IN the reduction of a decret of declarator of extinction of an apprising, upon this ground, That some of the witnesses adduced in the probation were not purged, others had not closed their depositions with the assertive clause, "that it was true," and some had not signed, nor sworn that they could not write; so that in effect the witnesses were *injurati*, though the commission bore they were solemnly sworn, which is but the judge's assertion;

THE LORDS, in respect the decret was *in foro*, and extracted several years ago, would not review the probation.

Fol. Dic. v. 2. p. 249. Harcarse, (DECREETS.) No 405. p. 109.

* * Fountainhall's report of this case is No 46. p. 1766. *voce* BONA FIDE CONSUMPTION.

No 422. 1686. December —. HAMILTON of Aikenhead against PORTERFIELD of Haplant.

A SHERIFF clerk's assertion, that a person judicially accepted the office of curator, found not sufficient without his (the party's) signing the act of curatory.

Fol. Dic. v. 2. p. 248. Harcarse, (TUTORS & CURATORS.) No 992. p. 280.

* * Sir P. Home reports this case :

GABRIEL PORTERFIELD of Haplant, having pursued James Hamilton of Aikenhead, as curator to the deceased Alexander Porterfield his brother, for the price of his brother's stock and plenishing, sold by Aikenhead to the Laird of Ralstoun, and for instructing that Aikenhead was a curator, produced an extract of the act of curatory out of the Commissary Court books of Glasgow, bearing, that the said Alexander Porterfield, the pursuer's brother, did compare, and elect Aikenhead one of the curators, and that he did compare and