

APPROBATE AND REPROBATE.

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1566. July 14.      GEORGE WEIR *against* The L. of LIE.

ANENT the action to be pursued by George Weir against the L. of Lie, for delivering to the said George of his brother's son and pupil, to whom the said George was made tutor testamentar, and therefore the said George should have the keeping of the said pupil: It was *alleged*, by the said defender, that the said George should not have the keeping of the said pupil, because the Laird of Stonebyres, guidfir to the said pupil, obtained the gift, and the ward of the marriage of the lands of the said pupil, to him and his assigney, and made the Laird of Lie, defender, his assigney to the samen. It was *alleged*, by the said pursuer, that, long before the assignation, the Laird of Stonebyres made the said pupil assigney to the said ward and marriage. Whilk *allegeance* of the pursuer was given to his probation; and, to prove the whilk *allegeance*, the said George produced an nottar, to produce an instrument, to prove his intent. Whilk nottar produced an instrument, bearing in effect, that the said L. of Stonebyres made the said pupil assigney to his own ward and marriage; and thereafter it was contended, that the said Laird, of his gude, have the maintaining and guiding of the said pupil. It was *alleged*, by the said defender, that the instrument had proven his intent toward the keeping of the said pupil, by reason of the second clause contained in the said instrument. It was *alleged*, by the pursuer, that the second clause was false and feigned, and offered him to improve the samen, *omni modo quo ut de jure*. It was *alleged*, by the defender, that the said pursuer might not improve one part of the instrument, and affirm another part to be liell. Whilk *allegeance* of the defender was repelled by the LORDS; and found, by interlocutor, that the said pursuer might affirm one part of the said instrument to be true for proving his intent, and might improve another part of the same.

*Fol. Dic. v. 1. p. 48. Lethington, MS. p. 77.*

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1671. June 23.      LADY BALLAGAN *against* LORD DRUMLANRIG.

THE Lady Ballagan being, by her contract of marriage, provided to certain lands, and, amongst others, to the lands of Birks, the contract bears, that she accepts of the saids lands in full satisfaction of all further conjunct-fee, liferent, or terce: she was infest in the lands of Birks by her husband, but was not confirmed by the Lord Drumlanrig superior, of whom the lands held ward. The Lady

No 1.

Found that a party might lawfully approve and make use of one part of an instrument for proving his intent, and yet offer to improve another part of the same as false.

No 2.

A third party was allowed to approbate one clause of a writ in his favour, and reprobate the rest.