1625. *June* 29. CRAWFURD *against* VALLANCE'S HEIRS.

No 62.
It was alleged in a process, that a minute of a mutual contract, which was in the hands of the writer, was lodged till certain things were performed. This not allowed to be proved by the witnesses and writer.

A MINUTE of contract being made betwixt Vallance and Crawfurd of Bedland, anent the alienation by Bedland of some lands to Vallance, for the price therein contained, which being left in the hands of the notary, who formed and wrote the same, after it was subscribed by both the parties; Bedland pursues for production and registration of the minute; in the which action, the heirs of Vallance, who was the party contractor, but then deceased, being convened, compeared, and proponed in the exception, that the minute ought not to be registered, because it was deposited by both the parties' consent in the notary's hands, who wrote the same, to remain with him, while such conditions were perfected by Bedland, which were appointed to be done, betwixt and a day appointed by both the parties to that effect; and in case the same were not done, the minute should have taken no effect; but the parties to have been free thereof, which conditions never took effect, and this was offered to have been proved by the oath of the notary, haver of the minute, and of the witnesses inserted therein; which was repelled, and only found relevant to be proved by writ, or oath of party; for the LORDS found it not reasonable to take the depositions of the writer or witnesses, to destroy the minute, against the consent of the party, albeit many times they will take their declaration to confirm a writ, and for corroboration thereof, Licet D. D. asserunt instrumentum reprobari posse per testes omni exceptione majores, Mascard. De Prob. verb. testis. In this process also the LORDS sustained this action, at the pursuer's instance, albeit the defender *alleged*, That he ought not to be found a party, who of the law can call for this minute, because, neither has he libelled in the summons, nor is he able to qualify, and allege, that this writ ever was in his hands, or become his proper evident, without the which he could have no interest to pursue therefor; which allegeance was repelled, in respect the writ called for was a mutual contract subscribed by both the parties, after the subscription whereof any of the persons might pursue therefor, albeit it had never been delivered, as is requisite in a simple bond, which cannot be called for, except it had become the party's evident, in whose favour it was conceived, either by delivery, or consignation to that end, viz. to be delivered to the party, which was not necessary in mutual contracts. *See* WRIT.

Act. *Hope & Mowat.* Alt. *Stuart & Cunningham.* Clerk, *Gibson.*

Fol. Dic. v. 2. *p.* 218. *Durie, p.* 167.

No 63.
Found in conformity to Crawford a-

1626. *June* 23. MAXWELL *against* DRUMLANRIG.

IN a suspension betwixt Maxwell of Hill and L. Drumlanrig, whereby he charges for payment of some money, contained in an obligation made by the