

No 58. 1726. *February.* M'DOUGAL *against* CLAPPERTON.

A verbal concert among creditors for suspending diligence against the common debtor was found obligatory, and that writ is not necessary in such a case. *See* APPENDIX.

*Fol. Dic. v. 1. p. 564.*

SECT. V.

Where Writ is not necessary.—Where a Bargain is agreed to be perfected in writing.—*Locus pœnitentiæ* after Writ is interposed.—Where the Right to be granted is disputable.—Verbal Bargain for a Lease

No 59. 1629. *February 17.* BROWN *against* LADY WHITTINGHAM.

A block of wheat being bought by one Brown from the Lady Whittingham, in presence of the Lord, her spouse, whereupon the buyer gave a dollar in arles, pursues for his interest. It was *excepted*, seeing there was no writ the seller might resile doubling the arles. To which it was *answered*, that the bargain was perfect, and the price agreed upon, which the pursuer referred to the defender's oath. THE LORDS repelled the exception, but reserved the modification of the interest to themselves.

*Fol. Dic. v. 1. p. 564. Auchinleck, MS. p. 21.*

No 60. 1629. *March 9.* AULD *against* KERR and SMITH.

ROBERT KERR and John Smith agree with Alexander Auld to give 500 merks for his right of comprising of 2000 merks owing to John Poole by Duncan Gray, which he had comprised for the said John Poole, and gave the said Alexander a dollar in arles. Shortly thereafter, they rued on the bargain, finding his right to the comprising not good. The said Alexander Auld pursues them for the said 500 merks, and refers the bargain to their oaths. They *answered*, that since their bargain was of that nature, that it behoved to be proved by writ, they had place to resile before the writ was perfected. THE LORDS found they might resile.

*Auchinleck, MS. p. 22.*