

No 75. and several other witnesses, above all exception, and also the Lord Gray himself, who acknowledged he got the assignation blank after his father's death, but not amongst his writs, and that he gave a bond therefor; many of the LORDS thought, that seeing, by the late act of Parliament, the apprising, though expired, was redeemable from him, for the sum he truly paid for it, that it were more just and safe that he should be preferred, unless the creditors would purge, and satisfy the sum, and that it were a dangerous example to find so important a writ, as this assignation, to be taken away by witnesses; yet the plurality found the testimonies so pregnant and unquestionable, they found the reply proved thereby, and found the apprising retired, and satisfied by the debtor, and so extinct.

*Stair v. I. p. 369.*

No 76. 1666. July ISOBEL TOSH against DAVID CROOKSHANK.

ISOBEL TOSH pursuing reduction of a decret, pronounced *in foro contradictorio*, and *in præsentia*, on this ground, that it was extracted by the clerks unwarrantably, contrary to what was done by the LORDS, which they offered to prove by the oaths of the advocates on the other side; it was *answered*, This were a ground to reduce all the LORDS decreets *in foro*.

Yet the LORDS sustained the reason to be proved, as said is.

*Stair, v. I. p. 391.*

No 77.

Witnesses were admitted to explain a minute, although they might not have been admitted if the deed had been formally extended.

1666. December 19. Mr JAMES CHEAP against Mr JOHN PHILIP.

MR JAMES CHEAP charges Mr John Philip to fulfil a minute of alienation of lands of Ormiston, sold by Mr James to Mr John, whereby Mr John was obliged to pay 25,500 merks, as the price, or to assign sufficient bonds therefor: He suspends, and offers to consign bonds, and, among the rest, a bond of 8000 merks due by the Town of Edinburgh. The charger *alleged*, That he was not obliged to accept that bond, because at the time of the agreement, and subscription of the minute, the charger particularly excepted the Town of Edinburgh's debt, and the suspender declared that it should be no part of the price, which he offered to prove by the writer and witnesses insert in the minute. The suspender *answered*, That witnesses were not competent in this case, where the words of the minute are not dubious, but clear and general of any sufficient debt, for if this were sustained, the alteration of the price, as well as the manner of payment, might be proved by witnesses. It was *answered*, That it was no way alike, nothing being here in question but the manner of payment, and not the quantity of the price.

THE LORDS ordained the writer and witnesses to be examined before answer.

No 77.

1667. *January 5.*—THE LORDS having considered the testimonies of the witnesses adduced, before answer, betwixt Mr James Cheap and Mr John Philip, upon the debate mentioned the 19th of December last, found the same to prove and to qualify the minute, they being the witnesses inserted above exception, and it but a minute, wherein particulars are not at all, nor fully set down, which will not be drawn in example as to any full and extended writs, either for altering any clause therein expressed, or for adding thereunto any omitted.

*Fol. Dic. v. 2. p. 219. Stair, v. I. p. 416 & 426.*

1667. *July 2.*GEORGE ALLAN *against* FAIRIE.

GEORGE ALLAN pursues reduction of a disposition granted by him to Fairie, upon the reason of circumvention, in so far as the disposition, though it was conceived absolute, yet it was expressly communed that it should contain a reversion, and was read as containing a reversion at the subscribing thereof, which was offered to be proved by the writer and witnesses inserted. The defender *answered*, That the reason was only probable *scripto vel juramento*, and so solemn a writ could not be taken away by witnesses. The pursuer *answered*, That the writer and witnesses inserted were most competent to prove a point *in fact*, viz. the fraudulent reading of that which was not contained; and there is here also produced an antecedent admicicle in writ, to grant a right redeemable.

THE LORDS, before answer, ordained the writer and witnesses inserted to be examined anent the terms of the treaty, and whether the disposition was read at the subscribing as an absolute or redeemable disposition.

*Fol. Dic. v. 2. p. 222. Stair, v. I. p. 467.*

1667. *December 17.* Lord ABERCROMBY *against* Lord NEWARK.

THE Lord Abercromby having sold to the Lord Newark the barony of St Ninians, there was a fitted account subscribed by them both, *in anno* 1647, containing the sums paid by Newark, and at the foot thereof concluding 37,000 merks to be due, but there is no mention made of the instructions in the account; the second article whereof bears, paid to Abercromby's creditor 30,000 merks; whereupon Abercromby *alleges*, That seeing the account bears not the delivery of the instructions, that Newark at least must produce the instructions of this article, which is general, for the bonds of these creditors are

No 78.

Witnesses and writer of a disposition, in a reduction on the head of circumvention, examined whether or not the deed was fraudulently and falsely read.

No 79.

An account being fitted, no proof, except by writ or oath, was allowed relative to the delivery of vouchers.