

1669. *January 26.* BOILL of KELBURN *against* MR JOHN WILKIE.

KELBURN, having given bond to Mr James Glendinning, minister, for £800, appointed to him for serving the cure at the kirk of Largs; Mr John Wilkie, as collector of the vacant stipends, did receive from Kelburn the sum of £400, and gave a discharge, bearing absolute warrandice, and especially to warrant him from the foresaid bond granted to Glendinning. Whereupon, and a decret recovered at Glendinning's instance, for payment of the whole sum contained in his bond, he did pursue Mr John Wilkie for the whole sum paid to Glendinning.

The Lords found, That Wilkie could be only liable for the sum of £400 received, and the annualrents and expenses to be modified, and not to the whole sum; notwithstanding it was ALLEGED, That the warrandice was special as to the whole bond granted to Glendinning, and did restrict the warrandice there-to; which they found, in law, could not be further extended.

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1669. *January 29.* WALTER SCOTT *against* SIR LAURENCE SCOT.

IN a reduction, pursued at the said Walter's instance, against Sir Laurence, of a bond for 7000 merks, granted to the said Sir Laurence *ex capite fraudis*, in so far as it was procured by a mere contrivance betwixt him and the notary; as appeared by a missive letter, and a ticket granted to the notary of £40, with a promise of other good deeds, enjoining him not to let the said Walter know any thing thereof:

The Lords ordained the notary, and witnesses insert, or any other witness who had any accession to the contrivance, to be examined *ex officio*; notwithstanding it was ALLEGED, That all these contrivances were only to induce the pursuer to grant the bond; but the pursuer being major, *sciens et prudens*, they ought to allege that he was circumvened when he subscribed the same.

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1669. *February 1.* ROBERT BROWN *against* JOHNSTON of COLCHRIE.

ROBERT Brown being assignee to a bill of exchange, granted by Colchrie, for the sum of £200 sterling,—it was ALLEGED, The said bill was null, not being subscribed by the defender, or by any notary or witness, being for so great a sum, there being nothing but a mark subjoined thereto.

The Lords repelled the allegiance, and sustained the bill; in respect that there were several bills produced, subscribed only with that same mark, which were of far greater value and importance; and that several merchants did depone that it was his custom to subscribe with such a mark, and that they believed this mark was truly his. As likewise, in respect that, by several former prac-