

an order from the justices-deputes, and, in case he should not find caution, be incarcerated.

Which the Lords found might be lawfully done, albeit he was attending the Session, being cited to compear and depone before the Lords.

Page 56.

---

1669. June 22.

IN the foresaid improbation, pursued against Barclay of Auchredy, at the instance of the heir of line of the Barony of Towie, one Steven, who was a witness insert in the disposition, compearing personally to be examined *in præsentia* :—

It was OBJECTED, That he was charged before the justices for stealing away of Barclay's papers, being his domestic servant, and was entertained by the pursuer since he ran away from Barclay.

The Lords, notwithstanding, did ordain him to depone ; in respect the citation before the justice was since ; and that, as he declared, as he was going away with two papers, so it was because Barclay did give them to him, that he might counterfeit the tutor of Towie's name, and subscribe a missive letter, as if it had been from the tutor.

Page 56.

---

1669. June 24. INGLIS of MURDESTOUN *against* FARY in GLASGOW.

MURDESTOUN being charged for payment of the sum of a thousand merks, conform to his bond, did SUSPEND, and intent reduction, upon this reason :— That the bond was granted by him when he was minor, to his hurt and lesion, it being for the exchange of a horse and a mare ; whereas the horse received was of no better value than the mare given.

It being ANSWERED for the charger, That, by a ticket apart, he had declared himself to be major, and had promised, upon soul and conscience never to quarrel the same. Likeas thereafter, he did grant a bond of corroboration of the foresaid bond.

It was REPLIED for the suspender, That he was cheated when he did grant that bond of corroboration, being made drunk by the charger ; which he referred to his oath, and whereupon he had intented a reduction *ex capite doli*.

The Lords, notwithstanding, found the letters orderly proceeded ; seeing they could not allege that he was drunk the time of the granting the first bond, and that he never having quarrelled the same till both the horse and the mare were out of their possessions ;—that the bargain was made in a public fair and market, where it is lawful to a seller to appreciate his horse as he pleases ;—they would not repone him against his own oath and bond, and his bond of corroboration ; seeing, *in emptione et venditione*, the law allows *invicem decipere* ; against which there is no remedy, *nisi sit infra dimidium justii pretii* ; which ground