

could not be here insisted on after so long a time ; and that the horse and mare were not extant, that they might be appreciated.

Page 57.

1669. *June 25.* BROWN *against* ISABEL SIMPSON and her DAUGHTERS.

THE said Margaret Brown, having comprised a tenement of land from John Livingstoun, did pursue a reduction of the right made to Livingstoun's daughter, as being done *in fraudem creditorum*, in so far as it was made first to one Greenlies, and by him disponed to Robert Wrie, and by him made over to the daughters ; which was so conveyed of purpose to prejudge Livingstoun's creditors ; seeing the daughters were young, and *in familia*, having no estate, and Livingstoun retained the possession during his lifetime. Whereupon Robert Wrie being examined upon death-bed, before answer, and declaring, That he was intrusted by Robert Simpson, goodsire to the daughters, who did order him to uplift the price of the tenement, being 1200 merks, due to him by the Earl of Wigtoun, which he paid to Greenlies, and thereupon got his right, and disponed it to the daughters.

It was much debated, if his sole declaration, without any further, should be sufficient to assoilye from the reduction ; which was thought to be of a dangerous consequence, seeing a trustee might declare, as to his right, any cause he pleased, and might be ignorant to whom truly the money did belong, whether to the father or goodsire ; and the presumptions were most violent, *viz.* That the father had still retained possession ; and that the tenement, being liferented by the mother and good-dame, was not worth the half of the money which the goodsire allowed ; and, being a provident man, could not make so bad a bargain for his grandchildren.

Therefore the Lords, before answer, did yet resolve to take further trial, and ordained the Earl of Wigtoun's chamberlains, or any other who knew the verity, to be examined if the Earl was truly owing that sum to Robert Simpson, and when it was paid and uplifted by Robert Wrie.

Page 58.

1669. *June 25.* WILL *against* The MAGISTRATES of KIRKALDY.

IN a subsidiary action pursued against the Magistrates, for suffering a prisoner for debt to escape ;—It being ALLEGED by the pursuer, That the prison doors were not sufficient ; and that some of them were not locked ; and a catband without the door was not put on that night before the prisoner escaped : And the Magistrates offering to PROVE, That the doors were sufficient and locked, and some of them blown up with powder ; and that they had done as great diligence that night, as ever they had been in use to do for keeping of prisoners for debt :

The Lords, before answer, did ordain both parties to have diligence for prov-