

No 8

tor was hard, Thomson being a true creditor, and doing nothing but suffering Cheisly to use execution to his own behoof.

*Gosford, MS. No 249. p. 103.*

1671. *January 19.* Mr ROBERT DICKSON *against* JAMES GRAHAM.

No 9.

It was found sufficient to reduce a bond granted to a merchant who had furnished money at Venice, that there was no agreement before hand, by which the merchant might take what rate of exchange he could get; and that after the money was furnished, he had affirmed to the pursuer, that the exchange to Venice was higher than he knew it really was.

MR ROBERT DICKSON advocate having granted bond to James Graham, for a sum of money furnished to his brother upon an account; he raises reduction of the bond as to a part thereof, upon fraud and circumvention; *alleging* that the true cause of the bond was the causing answer his brother money, and that he had made an agreement before the hand, for so much the French florin; but his brother having some monies answered in Venice, without any agreement before the hand; when the parties came to account, James Graham being wholly trusted by the pursuer, did give an account, and did affirm to the pursuer, that the rate of answering money in Venice was at that time so much dearer than the same truly was, if it had been only answered in France; wherein he now understands he was deceived; because it was equal or less value to furnish it in Venice than France; and offered to prove the value of the money by witnesses, and the rest by oath. The defender *answered*, That it was lawful for him, being a merchant, to take what value for the florin he could agree; and that it would be of evil consequence, if bonds upon merchants accounts were reducible, and they held as circumveners, if they had taken a greater rate than the ordinary rate at that time; especially here the agreement of the rate being with a prudent party and a lawyer. *2dly*, The pursuer had homologated the bond by paying a part of it, and could not quarrel the rest.

THE LORDS found the reason of circumvention relevant; in these terms, that there being no agreement before the hand, wherein the merchant might take any rate he could get; but after the money was furnished, the defender had fraudulently affirmed to the pursuer, that the furnishing of the florin to Venice, was more than the furnishing of it to France; although he knew the contrary at that time; but would not find the main error in that article of the rate to be relevant; and they repelled the homologation, because the pursuer might be deceived in one article, and not in the rest.

*Fol. Dic. v. I. p. 332. Stair, v. I. p. 704.*

1674. *November 30.*

No 10.

PILTON *against* The CREDITORS of the LORD SINCLAIR.

A person disposed his estate with the

THE deceased Lord Sinclair having married his daughter with John Sinclair younger of Hermiston, did dispoise to him his estate, with the burden of his