

No 603.

another bond or another cause. It was *answered*, That a solemn bond can only be taken away by a discharge or oath, but by no presumptions or adminicles; and that the taciturnity was by the minority of the pursuer.

THE LORDS found the presumptions and adminicles sufficient to prove the satisfaction of the minute, and that the discharge was sufficient to elide the bond of 4000 merks, unless a bond of 3000 merks could be shown, both bond and minute being so ancient, and the minute without annualrent, and extreme diligence used for the bond of 4000 merks which bore annualrent; likeas umquhile Napier's count-book bore payment to have been made, all written with his own hand, he having died long before this pursuit.

*Fol. Dic. v. 2. p. 268. Stair, v. 2. p. 65.*

No 604.

1676. February 17. ABERCROMBIE *against* ACHESON and LIVINGTON.

A TAVERNER, after she had removed from her master's service and was married, was pursued to count and reckon for ale and wine, which the pursuer offered to prove was laid in in his cellars.

THE LORDS found, That the pursuer ought to libel and prove that the debt was yet resting; seeing it was to be presumed, that servants of that quality did count weekly with their masters, and the pursuer would not have suffered the defender to go out from his service before she had counted and made payment; and it appeared that there had been former decisions to that purpose.

Reporter, *Lord Justice Clerk.*

*Dirleton, No 340. p. 162.*

1681. December 15. MERCER of Clavage *against* LADY ALDIE.

No 605.

The Lords presumed a bond paid upon strong circumstances of taciturnity, &c.

IN the action pursued by Mercer of Clavage against the Lady Aldie, it being *alleged* for the Lady, That the bond was an old bond, being granted *in anno* 1643, to the deceast William Mercer, Clavage's grandfather, never heard of now by the space of 38 years, and the creditor being in a poor and mean condition, and the debtor being solvent, it was presumed to have been paid, and that in Aldie's charter-chest there was a missive letter importing a discharge, which was lost when the charter-chest was brought over to Edinburgh, in a debate betwixt the heir male and the said Lady, as heir of line; and that she offered to prove that there was money paid by Sir James Mercer, equivalent to the sum contained in the bond, and that the creditor William Mercer declared that Sir James was not resting him any thing. THE LORDS having examined witnesses *ex officio* upon the foresaid points, they found the bond paid, and as-