

pronounced sentence, by imposing a fine, and the usual censure of standing at the church door and recanting. To the *second*, The Commissaries did no wrong; for though they repelled Sir Andrew *ab agendo*, yet, *ne delicta maneant impunita*, they sustained process *ad interesse publicum* at their procurator fiscal's instance.

The Lords heard the two parties scold a while upon one another, in their own presence, for their diversion. *Vol. I. Page 197.*

1682. November 30. JOHN LIDDEL *against* LAW.

JOHN Liddel, minister at Scoon, pursues an action against one Law, for £1000 Scots contained in a bond granted by Law, his wife's former husband.

The Lords, on Forret's report, reduced the bond, and found it satisfied, on this inartificial and conjectural probation; *1mo*, That it appeared, by the pursuer's oath, that the cause of the granting it was in lieu, contemplation, and recompense of her moveables and plenishing she brought with her; (though the bond in its narrative did not bear this cause;) and that the husband's children were forced to give her back again all these moveables, and she evicted them from them, because the marriage betwixt that husband and her had dissolved before year and day, without children, and so the bond was *causa data causa non secuta*. *2do*, That the cause of the bond being merely gratuitous, and his whole estate being but 2000 merks, he could not give away £1000 of it to his wife, in prejudice of his children their legitim.

The Lords sustained thir two reasons of reduction; and found them proven, and so on pregnant presumptions took away this bond. *Vide* a similar case, *15th Dec. 1681, Mercer. Vol. I. Page 198.*

1682. CORNELIUS NIELSON *against* JAMES BONNAR'S HEIRS.

*January 11.*—THE case betwixt Cornelius Nielson, merchant in Edinburgh, and the heirs of James Bonnar, upon the circumvention, was debated, wherein the lawyers expatiated learnedly on *dolus incidens et dolus dans causam contractui*; which being mistaken by some, has made me set down their definitions here.

Joan. Bockelmannus, in his learned *Compendium Institut. tit. De Actionibus*, p. 246, defines *dolum dantem causam contractui, quo quis inducitur ad contrahendum qui alias contracturus non fuisset; dolus vero incidens dicitur, non quo incidit in contractum, sed quo aliquis circa contractus incidentia decipitur; veluti cum vilius vendit et carius emit.*

Struvius, in *Syntagm. Juris*, vol. 1, p. 257, defines them from Cæsar Borgia, *de Dolo*, thus: *Dolum incidentem esse, quando quis omnino, sua sponte, alterius calliditate non inductus, contrahit, et in re de qua initur conventio, (v. g. circa rei valorem, qualitatem, &c.) seu in modo contrahendi, fraudulenter decipi-*