

them more favourable creditors; yet sundry of the Lords were of opinion, that when a man gives a considerable tocher to his daughter, in contemplation, not only of a jointure to be provided to her, but also of the fee of the lands to descend to his grandchildren, it should not be evacuated by fraudulent back-bonds, of even date with the solemn and public contract of marriage, by these who have consented thereto; and that this would encourage fraud. *Vol. I. page 532.*

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1692. *December 16.* MRS. HEWAT *against* ANDREW HEWAT.

MRS. HEWAT against Andrew Hewat, for proving his misbehaviour in his father's service. The Lords had formerly refused to admit women witnesses; now she offered to prove by Thomas Spence, servant to Sir James Stewart, the King's advocate. And it being objected, that his master having given his advice for Margaret Blair, the said Hewat's relict, his man got money in the cause;

ANSWERED,—That the money being only for writing the information, and not for deponing, he could not be refused. The Lords rejected him from being a witness. *Vol. I. page 533.*

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1692. *December 16.* FLETCHER of Benshaw *against* The EARL of AIRLY.

FLETCHER of Benshaw against the Earl of Airly. The Lords found a difference between a blank-bond and a blank assignation; and that it was not sufficient to prove that Airly had made payment to Fintry, who had first got this assignation blank in the assignee's name, from Goldman, the creditor, unless it were also proven, that the assignation was still blank when Airly paid it to Fintry, and that only *scripto vel juramento* of Benshaw, in whose hands it now is, and in whose name the assignation is now filled up; for they thought it no sufficient warrant to put Airly or any debtor *in bona fide* to pay, that they saw a blank assignation, unless they either saw it at the time of their payment still blank, or that it was then filled up; and in regard he had not paid it all at once, but in parts, therefore the Lords found, either the total or partial payments made by Airly to Fintry, sufficient to exoner,—it being proven by Benshaw's oath, that during these payments the assignation was still blank, in Fintry's hand, and his own name was not then filled up in it, and this at least to be liberate *pro tanto*; though some of the Lords thought, if Benshaw knew that any part was paid to Fintry, as then standing in the right, it should liberate *quoad* the hail. But the rest inclined to the contrary, in respect Fintry was broke, and the warrandice and recourse would signify nothing against him. But this, and many other intricate difficulties arising from blank-rights, convinced the Lords how necessary it might be to discharge such blank conveyances; for whatever they hold in of drawing assignations, &c. for dispatch and expedition of commerce, their inconveniency in being the foundation of fraud and confusion, does more than balance such advantage. *Vol. I. page 533.*