

these debts, as far as the purchase-money of them extended beyond her separate fund, had been acquired with her husband's effects." No 214.

Fol. Dic. v. 2. p. 132. Fac. Col.

** This case is No 11. p. 4316. *voce* FIAR ABSOLUTE AND LIMITED.

DIVISION VI.

Vitiated Writs when presumed Fraudulent, when Innocent.—An impossible condition in a Writ, presumed an error of the Writer.

1613. May 15. Lo. FORBES *against* SINCLAIR.

IN an action of registration of a contract betwixt the Lo. of Forbes, and William Sinclair of May, the LORDS assoilzied, because the contract was blank, in some parts interlined, riven almost through, and battered on the back, chiefly because the Lo. of May being examined by his oath *de calumnia*, granted, that he had craved the contract blank in the lines, which he had filled up sincesine, and that the same was made upon condition betwixt them, for sustaining of the burden of the Lo. of Drumbaith's debts.

Fol. Dic. v. 2. p. 153. Kerse, MS. p. 45.

1629. December 4. OLIPHANT *against* PEEBLES.

IN a spuilzie of teinds at the instance of a tacksman, the tack bearing the entry to be in the year 1617, and that year being delete, and the year written on the margin to be *in anno* 1616, which margin bearing the entry, was not subscribed by the setter of the tack; whereupon the defender *alleged*, That it could not produce spuilzie, being so vitiate in the entry; notwithstanding whereof the tack was sustained; for it was found, that albeit it had no entry appointed therein at all, yet it might be sustained, for the tack was set by a parson of a kirk for many nineteen years, with consent of the patron, and tacks set during lifetime needed not to bear any time of entry, seeing it behoved to be understood, that the entry should be presently at the date thereof, except

No 215.

No 216.

A tack vitiated in the date of the entry, sustained, the entry having been presumed at the date of the writ.

No 216. it were otherwise evident that any other entry was appointed specially both setter and receiver living.

Act. *Present.*

Alt. ———.

Clerk, *Hay.*

Fol. Dic. v. 2. p. 152. Durie, p. 472.

No 217.

A bond found null, in respect, that in a material place there was about half a line so obliterated that it could not appear what had been written on it. As it might have been a material clause, it was presumed deleted *dolo* by the creditor.

1671. November 22. MR GEORGE PITTILLO *against* ANNA FORRESTER.

UMQUHILE William Ayton of Fiddings, having no children of his own, disposed his lands to Mr George Pittillo his sister's son, reserving his own and his wife's liferent, and with this provision, that it should be leisome to him at any time during his life, *etiam in articulo mortis*, to dispo, set tacks, and to burden the lands by bonds for sums of money, or annualrent forth thereof, and also with provision, that what legacies he shall leave, or deeds he shall do at any time during his life, by writ subscribed with his hand, that the said Mr George shall be obliged to fulfil the same. Upon these clauses he did at first burden the estate with 6000 merks, and Mr George Pittillo being informed that there was a second bond of 4000 merks, and 2000 merks to two brother daughters, he pursues a reduction and improbation thereof; and for satisfying the production, Anna Forrester, his relict, produces a bond of 6000 merks, bearing to be subscribed by notaries at his command: Now Mr George insists upon these reasons of reduction, which were four; *imo*, That this bond could not burden the land, because it imports no real right by any infeftment, and bears only that he burdens his successors with the sum, and so falls not under the first part of the clause, which is not limited by the manner of subscription, neither can it be warranted by the second part of the clause, which bears expressly, that it must be by writ subscribed under his hand; but this is only subscribed by notaries, and cannot be said to be subscribed by his hand. The *second* reason is, That the bond by ocular inspection is vitiated in the substantial thereof; for whereas it hath been the draught of a bond framed by the defunct when he lived at Kirkcaldy, and bears to be subscribed at Kirkcaldy, and was only intended for his wife, now his two nieces are adjoined, and for precipitancy the whole draught is altered and vitiated in the most substantial part thereof, for where it did bear the sum payable to her heirs, it is now made their heirs, and where it did bear, to be payable after the man and wife's decease, near half a line is so deleted and obduced, that hardly a letter of it can be seen, but it seems to have been, after the wife's decease also, for where thereafter the term is repeated, that which before was after our decease, is made after my decease, and where it did before bear, subscribed with my hand, it is now subscribed by notaries; upon all which it was *alleged*, The bond might be justly quarrelled, as false in the date, at least in the place of subscription, the defender having declared at the production of the bond, that they abode by it, as a writ truly subscribed, not at Kirkcaldy,