

1667. *June 1.* The DEACON of the WEAVERS *against* The MAGISTRATES of EDINBURGH.

THE Deacon of the Weavers,—being imprisoned by the Magistrates of Edinburgh, because he had disobeyed their order anent the putting in their hand a box for the poor of the journeymen, until some questions betwixt the masters of the trade and the journeymen of the same should be decided,—did crave, by a bill, to be enlarged, upon that reason, That the craft had intented a reduction of the contract betwixt their predecessors and their journeymen, concerning the keeping and having a box for the poor of the journeymen: and that, until the decision of the process, the box ought to be kept by their deacon.

The Lords ordained the complainer to be enlarged, by consigning the box in the clerk's hands.

Upon occasion of the said process, it was agitated amongst the Lords,—Whether there could be a contract and transaction betwixt the craft and journeymen, who are not an incorporation, and cannot oblige their successors, seeing there can be no successors but of a person or incorporation.

But the Lords, without giving interlocutor upon that point, ORDAINED the reduction to be heard summarily.

Mackenzie. *Alt.* Lockheart. Gibson, *Clerk.*

*Page 29.*

1667. *June 14.*

CHEAP *against* PHILP.

Mr Cheap pursued a reduction of a disposition made by ——— Philp, in favours of Mr John Philp, upon these reasons, That it was subscribed by two notaries, and their subscriptions did not bear *de mandato*; and because one of the notaries was known to be of so great age, that he had not been for a long time employed as a notary, and that he had only subscribed his name; the rest of the solemn words used by notaries, when they subscribe *in subsidium*, being written by the other notary. Therefore another notary had been also used besides the two notaries. And that no respect ought to be given to his subscription, by reason it was *ex intervallo*, and not *uno contextu*. 2. That the disposition was *in lecto*.

The Lords, when the case was reported, debated upon the first reason, and, in special, upon these points: 1. Whether, in subscriptions *in subsidium* by notaries, it be essential it should be expressed that they subscribed *ex mandato*; and, if that solemnity may be supplied, by offering to prove that the notaries were *rogati*.

It was URGED, That minutes and abbreviations of seasines might be extended and transumed, though none of the ordinary solemnities be expressed; and therefore such defects and omissions may be supplied.

It was ANSWERED, That, in abbreviations, *omnia præsumuntur solemniter acta*; but, when an instrument is complete, or any other writ, if it want the ordinary solemnities, they cannot be supplied: *et solennitas non præsumitur*; and, being only probable by the writ itself, it cannot be made up by witnesses.