

THE LORDS ordained the writer and witnesses to be examined before answer.

No 77.

1667. *January 5.*—THE LORDS having considered the testimonies of the witnesses adduced, before answer, betwixt Mr James Cheap and Mr John Philip, upon the debate mentioned the 19th of December last, found the same to prove and to qualify the minute, they being the witnesses inserted above exception, and it but a minute, wherein particulars are not at all, nor fully set down, which will not be drawn in example as to any full and extended writs, either for altering any clause therein expressed, or for adding thereunto any omitted.

Fol. Dic. v. 2. p. 219. Stair, v. I. p. 416 & 426.

1667. *July 2.*GEORGE ALLAN *against* FAIRIE.

GEORGE ALLAN pursues reduction of a disposition granted by him to Fairie, upon the reason of circumvention, in so far as the disposition, though it was conceived absolute, yet it was expressly communed that it should contain a reversion, and was read as containing a reversion at the subscribing thereof, which was offered to be proved by the writer and witnesses inserted. The defender *answered*, That the reason was only probable *scripto vel juramento*, and so solemn a writ could not be taken away by witnesses. The pursuer *answered*, That the writer and witnesses inserted were most competent to prove a point *in fact*, viz. the fraudulent reading of that which was not contained; and there is here also produced an antecedent admicicle in writ, to grant a right redeemable.

THE LORDS, before answer, ordained the writer and witnesses inserted to be examined anent the terms of the treaty, and whether the disposition was read at the subscribing as an absolute or redeemable disposition.

Fol. Dic. v. 2. p. 222. Stair, v. I. p. 467.

1667. *December 17.* Lord ABERCROMBY *against* Lord NEWARK.

THE Lord Abercromby having sold to the Lord Newark the barony of St Ninians, there was a fitted account subscribed by them both, *in anno* 1647, containing the sums paid by Newark, and at the foot thereof concluding 37,000 merks to be due, but there is no mention made of the instructions in the account; the second article whereof bears, paid to Abercromby's creditor 30,000 merks; whereupon Abercromby *alleges*, That seeing the account bears not the delivery of the instructions, that Newark at least must produce the instructions of this article, which is general, for the bonds of these creditors are

No 78.

Witnesses and writer of a disposition, in a reduction on the head of circumvention, examined whether or not the deed was fraudulently and falsely read.

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An account being fitted, no proof, except by writ or oath, was allowed relative to the delivery of vouchers.

No 79. yet above Abercromby's head, and Newark makes use of some of them to exhaust the 37,000 merks bond at the foot of the account. It was *answered* for Newark, That after eighteen years time, that he was not obliged to count again; but the foot of the account being subscribed by the pursuer, bearing 37,000 merks to be only resting, was sufficient to exoner him, and the not mentioning of instructions delivered, cannot presume, or prove against him, that they are in his hand, else the account signifies nothing, and he must not only instruct this article, but all the rest; neither did he make use of any bonds to exhaust the foot of the account, but such only for which precepts were directed to him after the account.

THE LORDS found the defender not liable to count, or produce the instructions of any of the articles, unless it were proved by his oath, or writ, that the instructions were retained in his hand.

Stair, v. I. p. 496.

1668. February 6. ALEXANDER CHISHOLM *against* RENIES.

No 80.
Witnesses *ex officio* examined to instruct the cause of a bond, the sum being filled up by another person than the writer of the bond.

ALEXANDER CHISHOLM, as executor to John Graham of Orchel, pursues William and Archibald Renies for a bond, granted by them to the defunct, *in anno* 1635, who *alleged*, That the true cause of the bond was by transaction of a blood-wit, made by the Laird of Gloret and Mr James Row, in whose hands this bond (then being blank) was put, and which unwarrantably came in the hands of Orchel the party, who, instead of 400 merks, filled up 2000 merks, which is offered to be proved by the arbiters' oaths, yet in life. The pursuer *answered*, That his bond could not be taken away by witnesses, especially extrinsic witnesses, there being no writ relative to this bond, or of the same date, or witnesses that might give any presumption of the cause thereof. The defender *answered*, That there were here far stronger presumptions, viz. that this bond hath been dormant thirty-three years, albeit it bore no annualrent, and Orchel was known to be in great necessity, and, by ocular inspection, it appears to be filled up with another hand, and blotted, which presumptions, being so singular, give ground enough to the LORDS to examine witnesses *ex nobili officio*.

THE LORDS ordained the witnesses and arbiters to be examined *ex officio*, reserving to themselves what these testimonies should operate, in respect of the antiquity and singularity of the case.

Stair, v. I. p. 520.

1668. June 9. JOANNA M'ALEXANDER *against* CHARLES DALRYMPLE.

No 81.
Witnesses examined relative to the

JOANNA M'ALEXANDER, a sister's daughter, and one of the nearest of kin to umquhile Elizabeth Dalrymple, pursues a reduction of the said Elizabeth's testament,