

Lords, before they would admit any witnesses *ex officio*, ordained either party to produce all the writs they founded on, and assigned a term to that effect, and granted diligences to either party for summoning such witnesses as they thought fit; to this effect, that, if the Lords, upon perusal of the writs, should find just ground to examine witnesses, the witnesses might be ready without a new term; and the Lords might consider what persons they would allow to be examined as witnesses, of those that should be adduced for either party.

*Vol. II, Page 224.*

1673. July 29.

BLAIR *against* BLAIR.

THERE being a contract of sale of lands by Ardlair to Denhead, Denhead was obliged for 2000 merks as the price; whereupon Ardblair obtained decret, of the Lords, for payment of the sum. Denhead raiseth suspension and reduction, on this ground,—That this sum being the price of land due by a mutual contract, the price could not be demanded till the disponder's obligations, which were the cause thereof, were perfected, *viz.* to cause Bagillo infest himself in the lands, and resign; after which there is a second contract, whereby Denhead ratifies the decret against him, and renounces his reduction and suspension; but it is provided, that if, between and such a day, Denhead should obtain decret against Bagillo for a greater sum, Ardblair should accept of it. The day being elapsed, Ardblair took Denhead with caption; who, being under caption, gave Ardblair a bond for the 2000 merks, and renouncing the obligations in the second contract: Which bond Denhead now suspends on this reason,—That this bond was granted *metu carceris*, he being under caption; and therefore could not hinder him to make use of his defence upon the first contract; and that he could not pay the price till they were secured in the land. It was answered, That, before any caption, he had ratified the decret whereon caption was used; and that this, being obtained upon a legal diligence, was no extortion, nor could it be reduced *ex capite metus*; for although parties giving bonds after decreets, being under caption, when they get no ease nor transaction, nor do not ratify the decret, but simply give bond, it is not accounted a homologation, more than if they had paid the money; in which case they must quarrel the decret; but here the decret quarrelled was ratified when there was no caption, and the obligations in the second decret were renounced. The Lords found, That there was here no relevant ground against the execution of this bond, upon pretence of the mutual obligations in the first contract; but reserved them by way of action, as accords.

*Vol. II, Page 225.*

1673. July 31.

HAMILTON *against* KENNEDIE.

JHON Weir having been heritor of the lands of Cumberhead, he wadset the same to Thomas Weir for a small sum. There was a second wadset by John Weir, younger, as being infest as heir in the lands (by a precept of *clare constat*.)