

otherwise by their interlocutor, upon the reason that it might be a general prejudice to all trust and commerce, seeing defenders, who were sure there could be no other probation against them by writ or witness, might so dispose upon their affairs as to retire out of the country, of purpose to defraud their true and lawful creditors.

Gosford, MS. No 870. p. 550.

No 108.

1680. December 17.

CLERK against SHARP.

JAMES CLERK pursues reduction of an apprising of the lands of Conachie, upon these reasons; *1mo*, That it proceeded upon decreets of the regality of St Andrews in absence, holding Conachie as confest, for exorbitant prices, far above the fiars; *2do*, The archbishop had received the pursuer as his vassal upon an apprising, before these decreets, and so ought to have called him in any process against the possessors; *3tio*, He produces a discharge of a part of the feu-duties apprized for, and yet insists not for annulling the apprising simply, but for restricting it to the principal sum and annualrent, and the true prices by the fiars. The defender *answered*, That if the discharge had been by the bishop himself, it might have annulled the apprising, but being by his factor, he might have been ignorant of it the time of the apprising, unless it were proven that before then the factor had accounted therefor, and therefore the discharge can only be allowed in the apprising, but restricted no further; neither is there any man obliged to accept the fiars, if he can prove a greater price, which he did, by holding the heritor as confest, who cannot be reponed after so long a time and diligence.

THE LORDS restricted the apprising to the fiars, and to the annualrent and necessary expenses.

Fol. Dic. v. 2. p. 184. Stair, v. 2. p. 819.

No 109.

A decree in absence, holding the defender as confessed, for exorbitant prices, far above the fiars, with an approving following thereon, was restricted to the fiars.

1682. February.

————— against LITTLEGILL.

A PROMISE of payment being referred to the defender's oath, and he having deponed *non memini*, the LORDS held him as confessed, unless he would be positive before extracting, it being *factum proprium* within two years.

Fol. Dic. v. 2. p. 184. Harcarse, (OATHS.) No 738. p. 209.

No 110.