

No. 49. sonal into a real right. Nor ought any stop to be put to the decret of mails and duties upon pretence of diligence to be done, which is uncertain both as to effect and time.

The Lords ordained the decret of certification to be extracted, but stopped the preference in the mails and duties till the first of December ; betwixt and which time the Laird and Lady Airth might adjudge and be in a capacity to compete with real creditors.

Forbes, p. 171.

1707. *November 21.* WADDEL *against* WADDEL and Her HUSBAND.

No. 50.

In the proving the tenor of a contract of marriage, which was raised only *incidenter*, to satisfy the production in an improbation of an apprising, whereof that contract was the ground, the adminicles produced being a decret *in fora*, mentioning the production of the extract of the contract, with the apprising, charter, and sasine thereon ; and the pursuer having adduced witnesses, who saw and read the said contract, and proved also, That the relict, by that apprising, possessed the lands for many years ;—the Lords thought, that there was a difference betwixt the making up of a writ to be the ground of a future action, and a tenor craved, only to shun certification on a presumptive falsehood ; and therefore found, That there being no presumptions of real falsehood against this contract, and the adminicles being so pregnant, though neither all the clauses, nor date, were fully proved, yet that there was sufficiency to exclude the certification, and so assoilzied from the reduction.

Fol. Dic. v. 2. p. 448. Fountainhall. Forbes.

. This case is No. 480. p. 12593. *voce* PROOF.

1709. *July 2.*

INGLIS *against* HAY.

No. 51.

The pursuer of a reduction not allowed to repeat *incidenter* a proving of the tenor of a writ necessary to make up his active title.

Forbes.

. This case is No. 66. p. 13293. *voce* QUOD AB INITIO VITIOSUM.