

construction; but where no such presumption appears from the deeds, it is altogether incompetent to offer a proof by witnesses. THE LORDS found, That from the legal import of the term heirs and assignees whatsoever, Archibald Douglas, as heir of line, was called to the succession; and found, That the parole-evidence offered to the effect of giving a different meaning to the said clause was not competent.

No 123.

Fol. Dic. v. 4. p. 156.

* * * This case is No 40. p. 4358: *vocce.* FIAR ABSOLUTE LIMITED.

1766. June 18. KENDAL & Co. *against* CAMPBELL of Inverliver.

IN a minute of sale of woods to a company, there was a reservation of a certain part. The seller insisted, that another part of the woods was also agreed to be reserved, and that it had not been valued along with the rest, though it was omitted in the reservation in the minute, and was not mentioned in a subscribed notandum afterwards added.

No 124.
How far a written contract can be supplied by witnesses?

This allegation he offered to prove by the witnesses present at the communing, and by the persons who had valued the woods; or, at least, by reference to the oath of the company's agent at the time, and who had himself an interest in the question, as having right to a proportion of the share of one of the partners, though he was no longer employed as agent for the company.

"THE LORDS having considered the minute of agreement, with the subscribed *nota bene*, posterior to the minute, and supplying an omission therein, but making no addition to the reservation; and also considering how dangerous it will be to cut down a written agreement, by parole-evidence, found the defender liable for the price of the whole woods in question."

*Act. Ilay Campbell.**Alt. Lockhart.*

G. F.

Fol. Dic. v. 4. p. 158. Fac. Col. No 36. p. 259.

1773. January 28.

ROBERT MAXWELL of Glenarm *against* WILLIAM BURGESS in Glenarm.

IN a charge for payment of rent, founded upon a tack, wherein the only mention made of houses was in a clause conceived thus; "and to keep up the dykes and houses on the said lands, and leave them in a habitable condition at the ish of the said tack, they being to be made so at his entry;" the reason of suspension was, that the charger had failed, in terms of the lease, to build a dwelling-house and office-houses upon the farm; and that the claim of rent was compensable with the expenses laid out by the suspender upon

No 125.
Parole-evidence not competent for proving any obligation against the tenant, other than what is contained in the tack.

No 125. workmanship and materials, and his damages, through his not having a house to lodge his family, and otherwise.

Answered; It was specially articulated, that the charger should build a dwelling-house on the farm by Burgess's entry; and that Burgess himself should build all other houses he might think necessary, at his own expense; and that the charger, for his part, built the dwelling-house in due time. The agreement he offered to prove by witnesses, who were present when it was made, and other persons to whom Burgess afterward gave an account of it, &c.

"THE LORDS found, That it is not competent for the master to prove, by parole-evidence, any obligation against the tenant, which is not contained in the tack; and remit to the Lord Ordinary to hear parties farther on the import of the tack, as it now stands; and to do therein as he shall see cause."

Act. Grosbie.

Alt. Hay Campbell.

Clerk, Robertson.

Fol. Dic. v. 4. p. 158. Fac. Col. No 51. p. 134.

1773. February 4.

GILBERT MOSES *against* WILLIAM CRAIG, ROBERT M'LINTOCK, and JAMES CLARK, Trustees for the Creditors of John M'Ewan.

No 126.

Parole evidence of the *actum et tractatum*, at the time of one's signing a deed, admitted, upon a charge of fraud and deception, to relieve from the effect of it.

GILBERT MOSES having made a demand on M'Ewan, his debtor, for payment, who offered to dispoise to him a tenement of houses, as payment *pro tanto*, a minute of sale, written by the defender Clark, was executed between the parties, and deposited with the writer, to make out a formal disposition; which not being done, (owing, as he alleged, to collusion between Clark, and Craig and M'Lintock, who were all creditors themselves of M'Ewan,) Moses proceeded to execute and register inhibition against M'Ewan, for his own safety; and, afterwards, he brought an action of reduction and improbation, concluding, *1mo*, For reduction of a trust-right, in form of an agreement, among M'Ewan's creditors, nominating the defenders sole trustees for the management and division of M'Ewan's effects; which deed, the pursuer alleged, was contrived by the defenders, for their own purposes, and whereto they had elicited his subscription, on false pretences, and greatly to his prejudice; *2do*, That the defenders should be decerned to implement the aforesaid minute of sale, according to the terms covenanted between him and M'Ewan.

THE LORD ORDINARY, upon advising a condescence, and other papers, before answer, allowed the pursuer to prove, *proat de jure*, the facts set forth by him; particularly, that, when he signed the trust-right, he was diverted from reading it, by assurances from the Trustees, that his purchase, and previous diligence, were not thereby hurt; and allowed the defenders a proof of their allegations.

A proof was accordingly brought; and the LORD ORDINARY pronounced the following interlocutor: "Having considered the memorials for both parties, and,