

[This rule seems a good one ; but I should think that, in the present case, it goes to the inadmissibility of the new evidence, for the ambiguity in the titles produced was obvious.]

PRESIDENT. I had once formed to myself a system of political law, but it has been shaken partly by the judgments of this Court, partly by the judgments of the House of Peers. I still wish to recur to my old system. I think that the doctrine of the reclaiming petition would destroy the whole spirit of the law. We are not to judge *prima instantia*. Grounds of claim must be produced before the freeholders ; but still opportunity must be given to answer objections, especially as absent freeholders may object. I also doubt of the competency, after decret had gone out, upon the proof before answer being allowed.

On the 14th July 1773, the Lords found the production of new evidence competent.

*Act.* Ilay Campbell, &c. *Alt.* Cosmo Gordon, &c.

1773. July 16. ROBERT ARTHUR *against* JOHN CALLIN.

#### ARBITRATION.

Reduction of a Decree-Arbitral.

[*Faculty Collection*, VI. 205 ; *Dict.* 667.]

HAILES. The proof is competent. Arthur's objection to the decret-arbitral is, that the arbiters have left a point to be decided by an after probation. Callin answers, The arbiters did this at Arthur's special request, and this fact will be proved by the oaths of the arbiters. Arthur cannot be allowed to object to his own deed : he is barred *personali exceptione*. The purpose of the proof is singly to make good the *personalis exceptio*.

PRESIDENT. I will neither support nor overturn a decret-arbitral by the evidence of witnesses ; but I will allow a fact to be proved concerning a decret-arbitral, in order to explain the *res gesta*.

On the 16th July 1773, the Lords found that the arbiters may be examined ; adhering to the interlocutors of Lord Auchinleck.

*Act.* A. Lockhart. *Alt.* R. M'Queen.

1773. July 16. AGNES WATSON *against* MARY RAE.

#### TUTOR AND CURATOR.

[*Fac. Coll.*, VI. 207 ; *Dictionary*, 16,369.]

HAILES. There is no contrariety in the decision of *Little Libberton*, as re-

ported by Forbes and Fountainhall ; only the one account of it is more special than the other.

KENNET. The curators cannot be excused as to omissions, for they neglected to make up inventories.

PRESIDENT. An express statute was necessary, in order to authorise the father to dispense as to omissions. We cannot extend the statute : if we could, we ought not ; for then every curator would insist to be named without being liable for omissions. If this is the common practice, so much the worse. A judgment of the Court is the more necessary, to correct abuses.

On the 16th July 1773, the Lords found the curators liable for omissions ; adhering to the interlocutor of Lord Auchinleck.

1773. *July 20.* ROBERT GORDON of Hallhead *against* JAMES BRODIE and OTHERS.

SASINE.

[*Supplement, No. 5,587.*]

MONBODDO. It was not necessary for the notary to be more special than he has been.

COALSTON. It would be much better for notaries to follow the common style. Yet I dare not listen to an objection which might overturn many a real right. At least, I would make a previous inquiry into the practice.

On the 20th July 1773, “ the Lords repelled the objection, and ordered Mr Gordon to be enrolled.”

*Act.* A. Gordon, Cosmo Gordon. *Alt.* J. Ferguson, &c.

1773. *July 27.* JOHN HINTON, Bookseller in London, *against* ALEXANDER DONALDSON and OTHERS.

LITERARY PROPERTY.

[*Woodhouselee's Dictionary, III. 388 ; Dictionary, 8307.*]

KENNET. I meddle not with the law of England. I am not acquainted with that law, nor do I think that the question can be determined by that law. The question is as to the law of Scotland. The claim is not founded on the law of nature. That law is not founded on abstract reasoning ; it must be