

No 79. yet above Abercromby's head, and Newark makes use of some of them to exhaust the 37,000 merks bond at the foot of the account. It was *answered* for Newark, That after eighteen years time, that he was not obliged to count again; but the foot of the account being subscribed by the pursuer, bearing 37,000 merks to be only resting, was sufficient to exoner him, and the not mentioning of instructions delivered, cannot presume, or prove against him, that they are in his hand, else the account signifies nothing, and he must not only instruct this article, but all the rest; neither did he make use of any bonds to exhaust the foot of the account, but such only for which precepts were directed to him after the account.

THE LORDS found the defender not liable to count, or produce the instructions of any of the articles, unless it were proved by his oath, or writ, that the instructions were retained in his hand.

Stair, v. I. p. 496.

1668. February 6. ALEXANDER CHISHOLM *against* RENIES.

No 80.
Witnesses *ex officio* examined to instruct the cause of a bond, the sum being filled up by another person than the writer of the bond.

ALEXANDER CHISHOLM, as executor to John Graham of Orchel, pursues William and Archibald Renies for a bond, granted by them to the defunct, *in anno* 1635, who *alleged*, That the true cause of the bond was by transaction of a blood-wit, made by the Laird of Gloret and Mr James Row, in whose hands this bond (then being blank) was put, and which unwarrantably came in the hands of Orchel the party, who, instead of 400 merks, filled up 2000 merks, which is offered to be proved by the arbiters' oaths, yet in life. The pursuer *answered*, That his bond could not be taken away by witnesses, especially extrinsic witnesses, there being no writ relative to this bond, or of the same date, or witnesses that might give any presumption of the cause thereof. The defender *answered*, That there were here far stronger presumptions, viz. that this bond hath been dormant thirty-three years, albeit it bore no annualrent, and Orchel was known to be in great necessity, and, by ocular inspection, it appears to be filled up with another hand, and blotted, which presumptions, being so singular, give ground enough to the LORDS to examine witnesses *ex nobili officio*.

THE LORDS ordained the witnesses and arbiters to be examined *ex officio*, reserving to themselves what these testimonies should operate, in respect of the antiquity and singularity of the case.

Stair, v. I. p. 520.

1668. June 9. JOANNA M'ALEXANDER *against* CHARLES DALRYMPLE.

No 81.
Witnesses examined relative to the

JOANNA M'ALEXANDER, a sister's daughter, and one of the nearest of kin to umquhile Elizabeth Dalrymple, pursues a reduction of the said Elizabeth's testament,