

an order from the justices-deputes, and, in case he should not find caution, be incarcerated.

Which the Lords found might be lawfully done, albeit he was attending the Session, being cited to compear and depone before the Lords.

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1669. June 22.

IN the foresaid improbation, pursued against Barclay of Auchredy, at the instance of the heir of line of the Barony of Towie, one Steven, who was a witness insert in the disposition, compearing personally to be examined *in præsentia* :—

It was OBJECTED, That he was charged before the justices for stealing away of Barclay's papers, being his domestic servant, and was entertained by the pursuer since he ran away from Barclay.

The Lords, notwithstanding, did ordain him to depone; in respect the citation before the justice was since; and that, as he declared, as he was going away with two papers, so it was because Barclay did give them to him, that he might counterfeit the tutor of Towie's name, and subscribe a missive letter, as if it had been from the tutor.

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1669. June 24. INGLIS of MURDESTOUN *against* FARY in GLASGOW.

MURDESTOUN being charged for payment of the sum of a thousand merks, conform to his bond, did SUSPEND, and intent reduction, upon this reason :— That the bond was granted by him when he was minor, to his hurt and lesion, it being for the exchange of a horse and a mare; whereas the horse received was of no better value than the mare given.

It being ANSWERED for the charger, That, by a ticket apart, he had declared himself to be major, and had promised, upon soul and conscience never to quarrel the same. Likeas thereafter, he did grant a bond of corroboration of the foresaid bond.

It was REPLIED for the suspender, That he was cheated when he did grant that bond of corroboration, being made drunk by the charger; which he referred to his oath, and whereupon he had intented a reduction *ex capite doli*.

The Lords, notwithstanding, found the letters orderly proceeded; seeing they could not allege that he was drunk the time of the granting the first bond, and that he never having quarrelled the same till both the horse and the mare were out of their possessions;—that the bargain was made in a public fair and market, where it is lawful to a seller to appreciate his horse as he pleases;—they would not repone him against his own oath and bond, and his bond of corroboration; seeing, *in emptione et venditione*, the law allows *invicem decipere*; against which there is no remedy, *nisi sit infra dimidium justii pretii*; which ground

could not be here insisted on after so long a time ; and that the horse and mare were not extant, that they might be appreciated.

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1669. *June 25.* BROWN *against* ISABEL SIMPSON and her DAUGHTERS.

THE said Margaret Brown, having comprised a tenement of land from John Livingstoun, did pursue a reduction of the right made to Livingstoun's daughter, as being done *in fraudem creditorum*, in so far as it was made first to one Greenlies, and by him disponed to Robert Wrie, and by him made over to the daughters ; which was so conveyed of purpose to prejudge Livingstoun's creditors ; seeing the daughters were young, and *in familia*, having no estate, and Livingstoun retained the possession during his lifetime. Whereupon Robert Wrie being examined upon death-bed, before answer, and declaring, That he was intrusted by Robert Simpson, goodsire to the daughters, who did order him to uplift the price of the tenement, being 1200 merks, due to him by the Earl of Wigtoun, which he paid to Greenlies, and thereupon got his right, and disponed it to the daughters.

It was much debated, if his sole declaration, without any further, should be sufficient to assoilye from the reduction ; which was thought to be of a dangerous consequence, seeing a trustee might declare, as to his right, any cause he pleased, and might be ignorant to whom truly the money did belong, whether to the father or goodsire ; and the presumptions were most violent, *viz.* That the father had still retained possession ; and that the tenement, being liferented by the mother and good-dame, was not worth the half of the money which the goodsire allowed ; and, being a provident man, could not make so bad a bargain for his grandchildren.

Therefore the Lords, before answer, did yet resolve to take further trial, and ordained the Earl of Wigtoun's chamberlains, or any other who knew the verity, to be examined if the Earl was truly owing that sum to Robert Simpson, and when it was paid and uplifted by Robert Wrie.

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1669. *June 25.* WILL *against* The MAGISTRATES of KIRKALDY.

IN a subsidiary action pursued against the Magistrates, for suffering a prisoner for debt to escape ;—It being ALLEGED by the pursuer, That the prison doors were not sufficient ; and that some of them were not locked ; and a catband without the door was not put on that night before the prisoner escaped : And the Magistrates offering to PROVE, That the doors were sufficient and locked, and some of them blown up with powder ; and that they had done as great diligence that night, as ever they had been in use to do for keeping of prisoners for debt :

The Lords, before answer, did ordain both parties to have diligence for prov-