

dered this case, found, That it was a dangerous preparative to sustain actions upon verbal treaties of marriage, there being neither a subscribed contract nor mandate; but there being this singularity, that it was libelled that the Lady had given full assurance, and had engaged the pursuer to be at great charges in the prosecution of that marriage, and notwithstanding had obstructed the same, all being performed that she had required, they did sustain the action, reserving to modify after probation: But as to the manner of probation, found it only probable, by the Lady's writ or oath; and in case it were referred to her oath, they did grant diligence to cite such as were her confidants, and named to be present. At her deposition she granting that she did give assurance; they found it probable by witnesses, that she did impede and hinder the young gentleman to see the young lady, and so stopped the marriage.

*Gosford, MS. No 820. p. 517.*

No 5.

1687. *January 25.* SPENCE and WATSON *against* ROBERT ORMISTON.

THE case of Spence and Watson *contra* Robert Ormiston, was reported by Kemnay.—Ormiston had sold Spence a teirce of brandy, and was to deliver it to to him in his shop at Edinburgh; but the waiters seized on it, and it was confiscated, being stolen in at the port without paying the town's dues; and he being forced to redeem it by paying the triple excise, pursued the seller for refunding his damage, which he restricts to what he actually gave.—*Alleged*, After tradition the peril is the buyer's.—*Answered*, You sold it *prout optimum maximum*, free of all incumbrances; unless you offer to prove, that the buyer took it with the hazard; and the seizure arose from a deed of your's, in not paying the custom. The question was, On whose peril the brandy was confiscated? —THE LORDS found it was the seller's, he being obliged to deliver it in the buyer's shop in Edinburgh; but restricted it to the true damage sustained by him, and not to what he might have made by retailing it. This was reclaimed against by a bill.

*Fol. Dic. v. 1. p. 208. Fountainball, v. 1. p. 442.*

1710. *June 20.*

SIR GEORGE HAMILTON *against* WILLIAM DUNDAS of Airth and his LADY.

THE Laird and Lady Airth having assigned to Sir George Hamilton several debts due to them by Alexander Hamilton of Grange, particularly an adjudication led upon the estate of Grange in February 1678, in so far as might be extended to 19,000 merks owing by them to Sir George; and Airth having obliged himself and his heirs to deliver the adjudication betwixt and a certain day, under a

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No 6.

Goods were seized before delivery, and redeemed by paying triple excise. The purchaser found entitled to damages to the extent only of what he had actually paid, not for any profit he might have made.

No 7.

A person was bound to produce an adjudication on a third party's estate by a pre-