

No 2. 1685. February. AITCHISON against DICKSON.

IN the action February 1684, Aitchison against Dickson in Kelso, *voce* SUPERIOR AND VASSAL, the house in controversy being burned, the LORDS found, that the dominion and property being transferred to Aitchison, in respect he was infeft, and that the keys of the house were offered, that therefore the loss and prejudice by the burning, which was accidental, must follow Aitchison the buyer, who was a proprietor of the tenement; albeit there was a part of the price not paid, there being a difference about it that was referred to certain friends to be determined, which was not determined the time of the burning.

Fol. Dic. v. 2. p. 56. Sir P. Home, MS. v. 2. No 700.

No 3. 1687. February 25. SPENCE, &c. against ORMISTON.

A TEIRCE of brandy was to be delivered at a merchant's shop in Edinburgh, but was seized as run goods, so that the buyer was constrained to redeem it by paying treble excise. In the question on whose peril the brandy was, the LORDS found, that it was on the seller's, he being obliged to deliver it in the buyer's shop in Edinburgh.

Fol. Dic. v. 2. p. 56. Fountainball.

* * * This case is No 6. p. 3153. *voce* DAMAGE AND INTEREST.

No 4. 1711. June 13. BEATRIX LINGCLATER against BOSWELL.

A person, altho' not proprietor, yet being *creditor speciei*, was found obliged to bear the accidental loss of the subject.

By contract of marriage betwixt Captain Boswell in Kirkaldy and Beatrix Lingclater, he having got several shares of ships and other considerable moveables by her, obliged himself to add to what he had got with her, the sum of of his own proper means and estate, and to take it to him and her in liferent and conjunct-fee; and she pursuing on the contract for having a sum filled up in the blank, it being by simplicity and ignorance omitted in her husband's lifetime, *qui non debet lucrari ex sua culpa*; *alleged*, That the very principal contract produced by herself *in modum tituli* is not only blank, but is scored; which clearly evinces that she and her friends have passed from it; especially seeing she is largely provided without it, a posterior clause bearing, that in case of no bairns (which case has existed) the half of her tocher is to return to herself, so she is at no great loss. *Answered*, If they have imposed on her weakness by scoring it, yet that can never deprive her of the *arbitrium bani viri*, which comes in place of the parties contracters, who certainly meant