

1688. June. WHYTFORD of Blanquhan *against* PROVOST MUIR.

No. 20.

Ratification of a decret, and a corroboration granted to the assignee by the person decerned, when he was under caption, found no homologation of the decret.

*Harcarse, No. 508. p. 142.*

1685. February 4, 5, 6, & 7.

GRAY *against* The EARL of LAUDERDALE.

No. 21.

All these days are consumed in debating *in presentia* that famous reduction raised by the Earl of Lauderdale against the Earl of Aberdeen, late Chancellor, of the decree of the Mint, mentioned 19th January, 1685\*, and of the transaction and homologation he had made thereof, by granting him a security for £.100,000 Scots; in which debate there were more gross reflections, both among the parties and advocates, than had been licenced in any cause before.

Instance in which the Court discouraged the attempt of a man in power to obtain advantages, in consequence of his situation, over his poorer and less powerful neighbours.

Aberdeen's defences were, *1mo*, It was *res transacta*; *2do*, *Res judicata*, and so was unquarrellable now. Answered, That both the sentence and transaction flowed on *vis, metus*, and concussion. Aberdeen's lawyers shunned to dip on the decree; and therefore, they ran to these two generals to exclude reduction, viz. *res judicata et transacta*; that the Lords' sentences are irreversible, as was found on the 22d of June, 1676, Irvine against Irvine, No. 218. p. 12112.; and this very Session, between Falconer and Kinnier; *2do*, That it is called *improba postulatio*, to crave transactions to be rescinded, in L. 10, 19, & 20. C. De transact. And it is the most sacred, binding, and inviolable of all contracts, and is derived from *trans adigere*, to rivet and drive a nail to the head, and is called *exceptio privilegiata et impeditiva litis ingressus*. Answered, There are several cases wherein transactions may be quarrelled, as if they be elicited by dole, force, fear, or concussion; or where there is *lesio enormis*, as appears from L. 65. § 1. D. De conduct. indeb. L. penult. et ult. C. De his quæ vi metusve causa fiunt. et L. 3. C. De dolo. Replied, *Potentia sola* is nowise a relevant ground of reduction, per L. 6. C. De his quæ vi metusve causa fiunt; ubi sola dignitas Senatoria non sufficit; *2do*, Pinellus ad L. 2. C. De Resc. vendit.; and the solidest lawyers are clear, that *lesio enormis in eventu* is not enough to reduce a transaction; whereof we have a famous instance in L. 78. § ult. D. Ad S. C. Trebell. And though *res judicata* be not a subject proper for transaction, but only *res dubia, et lis necdum finita*; yet where *sententia nodum transiit in rem judicatam, per lapsum decendii sine appellatione interposita*, so that there is *metus litis*, (which is Aberdeen's case), such

\* This was an investigation relative to the coinage which had been carried on before the Privy Council.