

price, on the pretence of offering to prove that the ware was insufficient; after they have acquiesced in it, without protesting, or offering it back, and had sold it; for the *actio redhibitoria*, or *quanti minoris*, only took place, where, immediately upon discovering the insufficiency, it was reclaimed against, and was yet extant and undisposed of. See 7th July 1675, *Paton*. But reserved his action for damages against Cheisly, the cedent, for selling him rotten tobacco, as accords. But it was thought relevant to prove, by his oath, that he sold by samples which were disconform; or that he knew the insufficiency.

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1694. *January 6.* EUPHAM SCOTT, and GEORGE WINRHAM of Eymouth, her Husband, *against* DANIEL NICOLSON, Writer in Edinburgh.

THE Lords advised the probation in the concluded cause pursued by Eupham Scott, and George Winrham of Eymouth, her husband, against Daniel Nicolson, writer in Edinburgh; that the bond whereon he had obtained a decret against her, and on which she had granted him a bond of corroboration, was truly a bond lying blank in her father's charter-chest, and taken out thereof; and Mr Alexander Hay's name, for Daniel's behoof, filled up in it. The Lords found it proven, by the depositions of James Scott, Robert Legett, and others, that it had been a retired bond, and found in Clerkington's charter-chest amongst other papers, and delivered by the said James Scott to Daniel; and therefore they reduced it, and declared the bond of corroboration and transaction made thereon null.

This was only carried by one vote; and, though it was proven that James Scott had taken this bond out of his charter-chest, yet it was not so clear that Daniel was *consciuis fraudis*; and he had acquired it for an onerous cause of debt owing by James Scott to Lands, Daniel's father-in-law, though not adequate.

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1694. *January 9.* LORD PITSLIGO'S CREDITORS *against* The Two Ladies.

ARRRUCHELL reported the competition between the creditors of Lord Pitsligo and the two Ladies. The Lords sustained the old Lady's infertment, being for the principal sum of 4000 merks, notwithstanding it was alleged to be *donatio inter virum et uxorem*; seeing there was no contract of marriage, and this provision came in place of it; and ordained her to be ranked conform to the date of Watson's infertment, who was her trustee. And as to the young Lady, preferred her as to her jointure of forty chalders of victual, because prior to all the creditors' diligence. But, as to her additional provision of ten chalders more in 1687, found the creditors preferable to her therein, unless she can prove that, at the time, her husband had a sufficient visible estate to pay all his creditors, and the additional jointure beside: and repelled that allegiance proponed for her,—offering to fortify it, by proving it depended on two onerous causes, *viz.* the alimenter the children, and the inlake of her principal jointure, which fell short of the forty chalders of victual; for the Lords found she could not canvel