

cause to themselves ; though they are not judges to such causes in the first instance ; but, in respect of the prejudiciality of the other action depending against Mr Kirkwood, they thought it reasonable to stop this till the other were tried.

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1693 and 1695. FARQUHAR of GILMILNSCROFT *against* WILSON of SPANGO.

1693. *January 24.*—THE Lords refused to stop execution upon Spango's clear bond, on the pretence of his reduction ; seeing his reduction was not against the bond, but only against the pursuer's right of assignation thereto ; which was reserved to him, as accords.

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1695. *November 29.*—In the mutual actions pursued between James Farquhar of Gilmilnscroft and John Wilson of Spango, the Lords having advised the probation, they sustained Andrew Blair's title as nearest of kin to the deceased Campbell of Glassnock ; and found the disposition granted by the said Glassnock to Gilmilnscroft was proven to be signed the day before his decease, and that he was then so stricken with a lethargic palsy that he did not know the nature of it ; nor was the same read, nor the tenor thereof intimated to him, nor he capable to understand it : and therefore reduced the disposition, and assoiyled Spango. But, in regard it resulted from the testimonies, that John Ferguson, the notary, had been very instrumental in drawing and offering that disposition to the sick man, and yet afterwards entered into a contract with the heir to quarrel it, and was to have a share of the gain in the event of the reduction ; therefore it was contended that he ought to be liable in damages to Gilmilnscroft, in whose favours the disposition now reduced was granted, he having concurred in subverting a right he had been employed to procure.

The Lords thought the being a witness in a writ could not preclude the witness from impugning the same ; but, where one was active to reduce a deed which he had managed and carried on, they thought this might be construed a breach of trust.

The question then arose, How this could be drawn in upon this process, where Ferguson was not a party ? Some moved that they should be remitted to pursue him by way of action. But the Lords, finding that as the fact seemed fraudulent and unfair, they might try it instantly ; and, therefore, ordained him to be cited *incidenter* in this same process, to defend why he should not be condemned in the damages, the disposition being questioned on a deed of his, and made null, as far as he could, by his deposition.

I remember the Lords have sometimes found witnesses liable for damages to the party where the writ has been annulled on their confessing, upon oath, that, at the signing, they did not see the party subscribe, nor hear him give them warrant to sign, conform to the 5th Act, Parliament 1681.

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