

assigned apprising were greater than those due to the assignee; and the retiring of the assignation and apprising was offered to be proven by witnesses.

No 103.

The allegiance is only relevant to be proven *scripto vel juramento*; and it were a dangerous preparative to take away men's rights by witnesses, it being customary for apprizers to have blank assignations lying by them, till they meet with a merchant.

*Replied,* The assignee being dead, his oath cannot be had; but it is offered to be proven by the cedent, Dean-of-Guild Hamilton, and other witnesses, that the apprising, with the assignation, was delivered to Cromarty.

THE LORDS found the allegiance only probable, *scripto vel juramento*.

*Fol. Dic. v. 2. p. 218. Harcarse, (COMPRISINGS.) No 335. p. 81.*

1696. June 19.

ROBERT BRUCE, Petitioner.

No 104.

ROBERT BRUCE of Bordy, by a petition, represented, that he had granted bond to the deceased Daniel Nicolson, for 1000 merks, bearing borrowed money, yet truly it was a salary for agenting his law business, and which, being now assigned to Bailie John Murray, he craved the Lords would, *ex officio*, examine the writer, and subscribing witnesses, in the bond, anent the true cause of it; which being proven, it might be declared null *condicione, ob causam datam causa non secuta*. THE LORDS refused this bill; for they considered whatever might be done for expiscation where the writ bore alienary onerous causes in the general; yet where it bore *speciatim ex causa mutui* the same could not be cancelled, save only *scripto vel juramento* of the creditor, and which mean of probation he had omitted to crave, though Daniel was several months in prison before his execution. Some may think strange, why witnesses should be allowed to prove a trust, and not to qualify the narrative of a bond: only trusts are more frequent in relation to heritable rights.

*Fol. Dic. v. 2. p. 221. Fountainball, v. 1. p. 722.*

1697. February 3.

THOMAS DRUMMOND of Ricarton against The CREDITORS of Sir WILLIAM NICOLSON.

No 105.

I REPORTED Thomas Drummond of Ricarton against the Creditors of Sir William Nicolson. He and Ricarton were bound as conjunct principals in two bonds, the one for 6000 merks to Mr Edward Wright advocate, and the other of 4000 merks to Sir John Young of Lenny. Ricarton *alleging*, That he was but on the matter cautioner in both, though, to please the creditors, he had bound as *correus*, he raises a declarator against Sir William, to have him discerned to relieve him of the whole 10,000 merks; but Sir William dying *medio*

Found, by a narrow plurality, that witnesses might be admitted to prove, that one of the co-obligants in a bond, was cautioner only.