

No 68.

concern to annul my disposition, because I fairly and honestly gave it in to the register, and now it cannot be found. THE LORDS observed, there was an error and fault in burdening the quarreller of the writ called for with the search; for it may be easily presumed, that he will not be very curious to find it, and so he will not be serious, but rather superficial in seeking, his interest lying rather in suppressing it; and that it should be the other party, having the benefit of the writ, who should be trusted with the enquiry for it. And, in this case, there were two qualifications urged against the pursuer of the improbation; *imo*, That he had taken out an extract of the disposition called for himself, which, though no approbation or homologation of it, yet implied the warrants or records of it were then extant; *2do*, Sasine had been taken on this disposition, before it was registered, where its date being narrated, would contribute much to fortify the same. THE LORDS, before they would put my Lord Saline to a proving of a tenor; ordained a farther search to be made among the warrants, records, *responde* books, and registrations *per licets*; and, if the report should be, *quod non est repertum*, then they would consider that point, how far an extract may stop certification in an improbation in this circumstantiated case, or remit him to prove the tenor. What danger the lieges are in from those under-servants who keep the registers, appears from many instances; and, particularly, a late one, where Captain Waddel prevailed with one of them, for a little money, to give him back a principal discharge, and was forcing the debtor to pay the sum over again, because he could not produce the principal, but only an extract, had not the trick been providentially discovered; for which his ear was nailed to the tron; which shews this sort of villainy is practicable, and every one may not be so fortunate in the discovery as this man was; and so it lays a foundation for ruining many, unless prevented by some suitable remedies.

Fol. Dic. v. 1. p. 523. Fountainhall, v. 2. p. 175. & 229.

*** The sequel of this case is printed, No 131. p. 6706. *voce* IMPROBATION.

No 69.

1712. January 10.

WHITE against REID.

IT is not competent to one, deriving right from a rebel by assignation, after the single and liferent escheats are gifted and declared, to quarrel the gift, upon act 147th, Parliament 1592, as simulate and null, by the donatar's allowing the rebel to continue in possession.

Fol. Dic. v. 1. p. 521. Forbes.

*** This case is No 16. p. 37. *voce* ACCESSORIUM SEQUITUR PRINCIPALE.