

1755. December 16. EARL of MARCH *against* ———.

A MAN subscribed a deed who could not read ; and the question was, Whether it was to be presumed that the deed was read over to him, and that he knew what was contained in it ; and the Lords found that it was not to be presumed but proved, and that the *onus probandi* lay upon the user of the deed. The President compared a man that could not read to a blind man ; and he said it was undoubted law that there must be a proof of the deed being read over to a blind man, otherwise it will not be accounted his deed.

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1755. December 16. BELL *against* ———.

IN this case the Lords found, that a commission having been given, in writing, to a carpenter to repair a house, and to furnish every thing necessary for that purpose, his account did not fall under the triennial prescription, the debt being constituted by writing ; *dissent*. Auchinleck, who thought it was dangerous that if a man should give a note to a merchant for certain things to be sent him, that should be a document of debt against him for forty years, especially as men were not in use, when they paid accounts, to get up such notes.

It was also decided in this case, that, if an interlocutor was founded in any mistake in point of fact, the party might be heard against it after the days of reclaiming were passed, and might get it amended in the very same process, without the necessity of a process of reduction.

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1756. January 6. ——— *against* ———.

IN this case the President declared it as his opinion that a verbal injury, or an abuse committed by one person against another *in rixa*, was not competent to be judged of by the Commissaries, any more than a blow, or other real injury ; because he thought it only belonged to the Commissaries to try matters of scandal or defamation,—which was when one person industriously spread about, by his whispering and tale-telling, a bad report of another. And with the President the majority of the Lords seemed to agree ; but as in this case the jurisdiction had been prorogated by consent of parties, the Lords did not find the sentence null, but reduced the fine from L.15 to 40s., and found that the *palinodium* appointed by the Commissaries was absurd, as words spoken in anger leave no stain upon the character.