

No 75. and several other witnesses, above all exception, and also the Lord Gray himself, who acknowledged he got the assignation blank after his father's death, but not amongst his writs, and that he gave a bond therefor; many of the LORDS thought, that seeing, by the late act of Parliament, the apprising, though expired, was redeemable from him, for the sum he truly paid for it, that it were more just and safe that he should be preferred, unless the creditors would purge, and satisfy the sum, and that it were a dangerous example to find so important a writ, as this assignation, to be taken away by witnesses; yet the plurality found the testimonies so pregnant and unquestionable, they found the reply proved thereby, and found the apprising retired, and satisfied by the debtor, and so extinct.

*Stair v. I. p. 369.*

No 76. 1666. July ISOBEL TOSH against DAVID CROOKSHANK.

ISOBEL TOSH pursuing reduction of a decret, pronounced *in foro contradictorio*, and *in præsentia*, on this ground, that it was extracted by the clerks unwarrantably, contrary to what was done by the LORDS, which they offered to prove by the oaths of the advocates on the other side; it was *answered*, This were a ground to reduce all the LORDS decreets *in foro*.

Yet the LORDS sustained the reason to be proved, as said is.

*Stair, v. I. p. 391.*

No 77.

Witnesses were admitted to explain a minute, although they might not have been admitted if the deed had been formally extended.

1666. December 19. MR JAMES CHEAP against Mr JOHN PHILIP.

MR JAMES CHEAP charges Mr John Philip to fulfil a minute of alienation of lands of Ormiston, sold by Mr James to Mr John, whereby Mr John was obliged to pay 25,500 merks, as the price, or to assign sufficient bonds therefor: He suspends, and offers to consign bonds, and, among the rest, a bond of 8000 merks due by the Town of Edinburgh. The charger *alleged*, That he was not obliged to accept that bond, because at the time of the agreement, and subscription of the minute, the charger particularly excepted the Town of Edinburgh's debt, and the suspender declared that it should be no part of the price, which he offered to prove by the writer and witnesses insert in the minute. The suspender *answered*, That witnesses were not competent in this case, where the words of the minute are not dubious, but clear and general of any sufficient debt, for if this were sustained, the alteration of the price, as well as the manner of payment, might be proved by witnesses. It was *answered*, That it was no way alike, nothing being here in question but the manner of payment, and not the quantity of the price.