

THE LORDS ordained the writer and witnesses to be examined before answer.

No 77.

1667. *January 5.*—THE LORDS having considered the testimonies of the witnesses adduced, before answer, betwixt Mr James Cheap and Mr John Philip, upon the debate mentioned the 19th of December last, found the same to prove and to qualify the minute, they being the witnesses inserted above exception, and it but a minute, wherein particulars are not at all, nor fully set down, which will not be drawn in example as to any full and extended writs, either for altering any clause therein expressed, or for adding thereunto any omitted.

*Fol. Dic. v. 2. p. 219. Stair, v. I. p. 416 & 426.*

1667. *July 2.*GEORGE ALLAN *against* FAIRIE.

GEORGE ALLAN pursues reduction of a disposition granted by him to Fairie, upon the reason of circumvention, in so far as the disposition, though it was conceived absolute, yet it was expressly communed that it should contain a reversion, and was read as containing a reversion at the subscribing thereof, which was offered to be proved by the writer and witnesses inserted. The defender *answered*, That the reason was only probable *scripto vel juramento*, and so solemn a writ could not be taken away by witnesses. The pursuer *answered*, That the writer and witnesses inserted were most competent to prove a point *in fact*, viz. the fraudulent reading of that which was not contained; and there is here also produced an antecedent adminicle in writ, to grant a right redeemable.

THE LORDS, before answer, ordained the writer and witnesses inserted to be examined anent the terms of the treaty, and whether the disposition was read at the subscribing as an absolute or redeemable disposition.

*Fol. Dic. v. 2. p. 222. Stair, v. I. p. 467.*

1667. *December 17.* Lord ABERCROMBY *against* Lord NEWARK.

THE Lord Abercromby having sold to the Lord Newark the barony of St Ninians, there was a fitted account subscribed by them both, *in anno* 1647, containing the sums paid by Newark, and at the foot thereof concluding 37,000 merks to be due, but there is no mention made of the instructions in the account; the second article whereof bears, paid to Abercromby's creditor 30,000 merks; whereupon Abercromby *alleges*, That seeing the account bears not the delivery of the instructions, that Newark at least must produce the instructions of this article, which is general, for the bonds of these creditors are

No 78.

Witnesses and writer of a disposition, in a reduction on the head of circumvention, examined whether or not the deed was fraudulently and falsely read.

No 79.

An account being fitted, no proof, except by writ or oath, was allowed relative to the delivery of vouchers.