

1629. February 10. M'GIE against Lord YESTER.

No 173.

If a writ be subscribed and not delivered to the party, but consigned in the hands of a third party till some cautioner subscribed the same, this writ cannot be thought to be the party's evident till the said condition be performed, and this condition anent the terms of the consignment may be proved by the depositor's oath.

Auchinleck, MS. p. 155.

1675. February 24. COWAN against RAMSAY.

No 174.

CHARLES COWAN having charged James Ramsay upon a decret of the LORDS, he suspended, and *alleged*, That the decret was unwarrantably extracted. It was *answered*, That the allegiance was denied: *2do*, The decret could not be quarrelled, because it was ratified by a posterior agreement produced, deposited in Pitcairlie's hands, and the terms of depositions subscribed by him and the parties. It was *replied*, That the parties thereafter passed from that minute, and gave order to the depositor to cancel it, which was offered to be proved by his oath. It was *duplicated*, That ordinarily the oaths of depositors prove where the terms of depositions are not in writ, but the same is not receivable here, where the terms are in writ, subscribed by the depositor and the parties.

When the terms of depositions are in writ, the oath of the depositor is not received to prove contrary thereto.

THE LORDS refused the depositor's oath in this case, in respect the terms of depositions were in writ.

Fol. Dic. v. 2. p. 226. Stair, v. 2. p. 327.

SECT. VIII.

Nuda Emissio Verborum.

A. against B.

No 175.

AN exception of voluntary removing proponed, and ejection pursued, against tenants entering to a room, is sustained to be proved by witnesses.

Auchinleck, MS. p. 157.