

defunct in his charter-chest, and blank in the name and date, and that the defender intromitted with the same unwarrantably, and filled up his name;

THE LORDS ordained certain persons, who were going to France, to be examined before debate, reserving to themselves to consider what their depositions should work.

Though it may appear hard, that a writ should be taken away by witnesses, yet the reason being relevant, and in fact, and resolving in dole and fraud, it may be proved by witnesses.

1677. *January 17.*—THIS day again, in the case above mentioned, Caribber *contra* Fordel, the LORDS did find, upon a bill given in by Caribber, that albeit writ cannot be taken away but by writ directly, and that a disposition could not be taken away but by a renunciation or some other writ, where there is no question as to the validity and formality of the same, yet it may be taken away by a reduction *ex capite metus et doli*, and *minoris ætatis* and lesion; and that in such pursuits, the reasons being in fact, and libelled either upon force or circumvention and fraud, are probable by witnesses; and that the reduction at Fordel's instance upon that reason, viz. that the disposition in question was found among the defunct's papers the time of his decease, and was intromitted with and filled up by Caribber, is *ex eodem capite doli*.

Clerk, Hay.

Fol. Dic. v. 2. p. 217. Dirleton, No 427. p. 211. & No 432. p. 213.

* * A similar decision was pronounced, 16th January 1677, Stewart against Riddoch, No 74. p. 11406, *voce* PRESUMPTION.

1678. *November 30.* M'KENZIE of Suddy *against* GRAHAME of Drynie.

THE LORDS refused to sustain this reason of reduction of a decret; That the clerk had drawn the interlocutor contrary to the testimonies of the witnesses; for this would bring all decreets overhead, by fixing a pretended guilt on the clerks. Thereafter the Lords renewed their act for sealing the deposition; but, before extracting the decret, the LORDS will not refuse to review, as in Tweedale and Drummelzier's case.

Fol. Dic. v. 2. p. 223. Fountainball, MS.

1679. *February 13.* CATHCART *against* LAIRD of CORSCLAYS.

UMQUHILE Mr Hugh Cathcart having disposed all his estate, both heritable and moveable to Hugh Cathcart of Carletoun, his brother's son, and apparent heir to John Cathcart now of Carletoun, as heir to his father, pursues Corsclays

No 95.
aut minoris ætatis.

No 96.

No 97.
Although delivery of a writ, is presumed by