

No 100. ceased, to whom they had made up no titles. THE LORDS found it relevant to be proved by the oaths of the arbiters and comuners, That the whole claim due to the defunct was meant to be submitted, and that the sum decerned for was in satisfaction of the whole.

*Fol. Dic. v. 2. p. 220. Fountainhall.*

\* \* \* This case is No 16. p. 7142. *voce* INTERDICTION.

1684. November 28. DOCTOR BRISBANE *against* TWO GLASGOW MERCHANTS.

No 101.

IN the case between Doctor Brisbane, as curator for the Lord Napier, and two Glasgow merchants, to whom he had sold some of my Lord's victual of the lands of Carnock, and charged them on the contract for the price, their reasons of suspension were, *imo*, That they offered to prove, by the writer and witnesses inserted, that he was obliged to have carried these corns to a place 20 miles farther distant than the part where he delivered it, and so was liable arbitrary actione de eo quod certo loco. *Answered*, He opposed the contract bearing no such thing, which could not be taken away by witnesses. "THE LORDS found this only probable *scripto vel juramento*."

Then they offered back the victual as now insufficient. "THE LORDS found the victual, by the year's keeping, would deteriorate, and therefore found the charger was not obliged to take it back now." See SALE.

*Fol. Dic. v. 2. p. 219. Fountainhall, v. 1. p. 316.*

1686. March 18. RICHARD CUNNINGHAME *against* THE DUKE OF HAMILTON.

No 102.

RICHARD CUNNINGHAME's case *contra* the Duke of Hamilton is debated; and the LORDS, before answer, directed a commission to examine Lewis Lews, anent this bond given by Duke William, and Muirhead's condition, if he could want it so long. THE LORDS have often taken away old bonds upon presumptions.— See APPENDIX.

*Fountainhall, v. 1. p. 408.*

1688. February. GEORGE BRODY *against* CREDITORS OF CROMARTY.

No 103.

The retiring of an apprising and assignation to it, found probable only *scripto vel juramento*.

IN a competition of the Creditors of Cromarty, it was *alleged*, against an assignation to a comprising in favours of Joseph Brody, That it was *instrumentum apud debitorem repertum*, and so extinct, by being in possession of the common debtor, who could not *ex post facto* revive it by delivering the blank assignation. Now, that the assignation and apprising were once retired by the debtor, appears from this circumstance; the assignation is of a date two years anterior to Brody's back-bond, which he gave at the delivery, in respect the sums in the