

swer; and accordingly, on their refusing to debate, the LORDS ordained the witnesses to be examined.

No 205.

*Fol. Dic. v. 2. p. 192. Fountainball, v. 1. p. 713.*

1696. February 28.

EARL of LAUDERDALE *against* the DUCHESS of LAUDERDALE.

No 206.

JOHN, NOW EARL of LAUDERDALE, and the other Creditors of the Duke of Lauderdale, give in a petition against the Duchess, craving the Lord Harcarse and Sir Andrew Foster, the only two instrumentary witnesses alive, who signed witnesses to the Duke of Lauderdale's disposition of the barony of Leidington, and others, to the Duchess, may be examined, to lie *in retentis*, if it was read to the Duke, and if he knew what was signing, and if he did not ask them after he had done, what-for a paper it was he had subscribed; and if he was not made believe, that it was only a conveyance of his estate in trust, for the behoof of his heirs. *Answered* for the Duchess, That the present Earl's father and brother had both ratified it; and though there was a reduction now raised, yet it was neither seen nor returned, and so it was great precipitation to examine witnesses. Yet the Lords, on the suspicion that practices had been used by the Duchess, for impetrating that disposition, granted the desire of the bill.

*Fol. Dic. v. 2 p. 193. Fountainhall, v. 1. p. 716.*

1700. July 30. The EARL of ANNANDALE *against* SIR JOHN DALZIEL.

No 207.

THE Earl of Annandale pursues a reduction and improbation of a bond of 6000 merks, granted by his father to the deceased Sir John Dalziel of Glenrae, in 1662, against which there were sundry presumptions urged, that it was never heard of by the space of 30 years, whereas, there was another bond for a lesser sum, the annualrents whereof had been punctually paid and exacted; and one of the witnesses in the bond, called Patrick Johnston, having lived these many years bygone in Ireland, and being now accidentally here, the Earl craved to have him examined on the verity of his subscription. Glenrae, astructing and adminiculating the bond, produced a letter of the same date with the bond, and relative thereto, wrote by the Earl's father, and *alleged* there was no necessity for examining the instrumentary witnesses, seeing the letter, acknowledged by the Earl to be his father's hand-writ, sufficiently documented and supported the bond. THE LORDS were divided, whether a witness in an improbation could be received to lie *in retentis*, before the reasons came in to be debated of course; and, by a plurality of eight against seven, it carried in the affirmative, that he might. The next difficulty was, he could not depone, in respect the bond was not yet in the field. But there being a certification obtained against it in the

The Lords found that a witness in an improbation could be received to lie *in retentis* before the reasons came in to be debated in course.