Mrs Kirkton for exhibition of Mr Craig's bond; and she having deponed on the conditions foresaid, on which it was consigned in her hands, and that, before she got it perfected, the citation prevented her,—the Lords appointed the bond to be put in the clerk's hands. And Prestongrange seeking to have it delivered up to him, Mr Hugh repeated a declarator of extinction of his bond, on this ground, That the Lady Dirleton, creditor in the bond, never intended to have exacted it: for, when he signed it, and the two witnesses were subscribing it, she pulled it away; so there is only the name of one of them at it, without so much as the word witness adjected thereto. *2do*, The reason why it was put in Mrs Kirkton's hands was, because Mr Hugh was then in the north, preaching, by order of the General Assembly; whereas, if he had been in town, she would certainly have given it back to himself; in which case it would have been clearly *legatum liberationis:* so she was no more but a depositary and hand to convey it. *3tio*, Prestongrange can have no right to it, because he obstructed all access to his sister during the time of her sickness; notwithstanding she testified her inclination to settle her business, and called for one Nisbet, a writer, for that effect; and so he ought to lose the benefit, *tanquam indignus*, by the title of the Roman law, *Si quis aliquem testari prohibuerit.*

ANSWERED,---The nullity of the bond ought to be repelled, seeing the bond is holograph; and the want of witnesses can be supplied and made up by his oath. And, as to the *second*,---His bond cannot be taken from him by Mrs Kirkton's single testimony, seeing there is nothing antecedent to prove the deposition in her hands: besides, to annul writ by witnesses, is contrary to law, and *pessimi exempli*; and, at best, it can only be sustained as a nuncupative legacy, which can subsist no further than £100 Scots. And to the *third*,---Access was never denied, except when they came to disturb her when she was upon rest.

The Lords, considering the circumstances and specialties of this case, and inclining more to equity than strict law, found the bond extinct, and ordained it to be given up to be cancelled; and assoilyied him therefrom; he paying the 100 merks to Gemmil the beadle, with which he was burdened.

Some of the Lords, though they were convinced that it was the lady's intention to restore him his bond, yet they thought it a dangerous preparative to take away bonds by single testimonies. But others thought there was a concourse and chain of specialties here, that could hardly occur in any other case, which put it beyond the danger of drawing any bad consequence from it.

Vol. II. Page 353.

1707. *March* 8. THOMAS LOGIE *against* LILIAS and MARGARET WHITEHEAD.

THOMAS Logie, merchant in Edinburgh, against Whiteheads, as heirs-portioners, for payment of a debt contained in their predecessor's commission and charter-party. The Lords finding he had made a private transaction with Hamilton, husband to one of the two heirs, and yet insisted to make the other liable *in solidum*, on pretence that her sister was discussed by a decreet, and her heirs insolvent, and no estate could be condescended on:

The Lords found so much fraudulent indirect dealing and contrivances, that they imprisoned the said Thomas Logie, and fined him in £100 Scots, and or-

dained him to lie in prison till he paid it, and until the Lords gave further order. They likewise reprimanded the advocate who appeared for him, in presence of the faculty called in; and intimated to them to be more cautious and ingenuous in their pleadings, and not to countenance their clients in what they saw dirty and dishonest. *Vol. II. Page 357.*

1710. *January 5.*---A protest for remeid of law was given in by Thomas Logie, merchant in Edinburgh, against Lilias and Margaret Whiteheads, for repelling his defences, and for imprisoning him, founding on the Act of Parliament 1701; and craving 3000 merks, and five merks for each day of twenty-one he lay in the tolbooth, in terms of that Act; and appealing to the British Parliament, or to any court of chancery or equity they shall erect for hearing such cases.

The Lords thought the style very singular and extraordinary; and some were for imprisoning him, and causing him reform it; but others looked upon him as below their making him their party, and so slighted it. *Injuriæ spretæ exolescunt.* *Vol. II. Page 551.*

1707. *March* 12. THOMAS NICOL *against* PARK of FOULFORDLIES.

HAMILTON of Bancrief, as heritor of Nethermoninet in the Merse, grants a wadset out of it to Mr John Paip in 1652, redeemable for 3000 merks, containing a back-bond and irritancy, in case two years' annualrent should run in the third unpaid. Mr James Cheyn of Tillibin acquires the right of reversion, and by progress it comes to Thomas Nicol. The wadset, after several transmissions, is at last acquired by Park of Foulfordlies. Nicol raises against him a reduction, improbation, and declarator, That, he being accountable for the superplus duties of the land more than paid him the annualrent of his money, his superintromission must be ascribed *in sortem*, to extinguish his principal sum; and that, after count and reckoning, any part of it that remained unpaid he was willing to pay.

ALLEGED for Foulfordlies the wadsetter,---That he cannot be liable to count for the superplus rents of the lands more than the annualrent of his money, because he was *bona fide* possessor; in so far as, 1*mo*, He was pursued at the instance of this same Thomas Nicol, before the Sheriff of Berwick, to remove, and was assoilyied, which was sufficient to found and sustain his *bona fides*. 2*do*, Though it was originally an improper wadset, yet it bore a clause, That, if the non-payment of three terms' annualrent ran together unpaid, the back-tack should expire, and be null, *ipso jure*, by way of exception, without need of a declarator, and he should enter to the possession of the whole lands; but, *ita est*, the irritancy was *ipso facto* incurred, and the reverser, who granted the wadset, thereupon ceded the possession; which is a sufficient colourable title for him to lucrate the bygone rents, without being accountable. 3*tio*, The irritancy of the back-tack being incurred, it brought it precisely to the case of a proper wadset, which, by the 62d Act Parliament 1661, is made unaccountable, unless they offer caution, and you refuse to cede your possession.

ANSWERED for Nicol, the pursuer, to the *first*,---The sheriff's decreet can never be the foundation of your *bona fides*, but rather evinces a collusive design;