

1748. June 28.

BLAIR *against* BLAIR.

THE Commissaries may judge of idiocy, and allow a proof of it, to annul a marriage, in the same manner as they might of forgery, to set aside a testament, though not regular Judges of forgery; and a proof of idiocy being so led, without an inquest, the LORDS refused a bill of advocation.

No 280.

Eol. Dic. v. 3. p. 354. Kilkerran.

** This case is No. 11. p. 6293. *voce* IDIOTRY.

1748. July 19.

SHERIFF-CLERKS *against* COMMISSARIES.

IN the ranking of Cameron's Creditors, *anno* 1737, it being *objected* against an adjudication, that it was null, as founded upon a bond above L. 40 Scots, recorded in the Commissary Court books; the LORDS found the Commissaries books not a competent register for bonds or bills above the sum of L. 40 Scots, unless where there is a consent of the parties to registrate in these books; and declared, they would make an act of Sederunt, to certiorate the lieges of the incompetency of such registrations. But the Commissaries being heard against this intended act, the matter lay over. Some of the Sheriff-clerks, encouraged by the foregoing proceedings of the Court, applied, July 1748, to have an act of Sederunt, as aforesaid. This produced a hearing in presence, in which it was clearly made out, that the Commissary books are a competent register for bonds, bills, &c. without limitation of sums. And the reasoning which brought over the Court to this opinion was as follows:

In this island, it was an early practice for Judges to interpose in intricate cases, by pressing an agreement betwixt the litigants; and we have instances of this practice in the Court of Session, not a few within a century. This practice brought about many agreements, which were always recorded in the Judges books. The record was complete evidence of the fact; and, if either party broke the concord or agreement, execution was issued by the Court against him, without necessity of any intermediate process. See *Glanvil*, l. 8. c. 1. 2. 3. &c. The singular advantages of a concord or agreement, thus finished in face of Court, were soon understood, and led men to make all their agreements, of any importance, in that manner; which, at the same time, was the more necessary, before the art of writing came to be common.

From this practice sprung the deed termed in England a bond in judgment, and with us a bond containing a clause of registration. When, by population, bargains were multiplied, it became cumbersome to have recourse to a Court,

No 281.

The Commissary books are a competent register for bonds, bills, &c. without limitation of sums.

The Commissaries have a jurisdiction to authenticate tutorial inventories.