

1755. February 15.

The MAGISTRATES of GLASGOW against WILLIAM MACFAIT and Others.

MACFAIT and others took a lease of the malt-mills of Glasgow, and granted bond for the rent.

Being charged by the Magistrates for payment of this bond, they obtained suspension, and *pleaded*; That the Provost of Glasgow promised, at the time of the bargain, that the brewers, who imported ale, brewed by them without the regality of Glasgow, should pay multures to the malt-mills: That this promise, which induced the suspenders to give the rent demanded, has not been performed; and that a proportional deduction ought therefore to be made from the rent. Of this promise they demanded a proof by witnesses.

*Answered* for the Magistrates of Glasgow; No such promise was made, nor could in reason have been made; neither is a proof by witnesses competent. The terms of a lease in writing may not be altered, nor a bond, apparently absolute, rendered conditional by the evidence of witnesses. Parties who contract in writing, are understood to reject all proof of the obligation other than what arises from the deed itself, or from writings relative to it. Solemn obligations in writing must not be invalidated by witnesses, who may forget the precise words uttered at the time of the bargain, or not understand their import, or wilfully misrepresent them.

“THE LORDS refused to grant a proof by witnesses, and found the letters orderly proceeded.”

Reporter, *Justice-Clerk.*Act. *Miller.*Alt. *Lockhart.*Clerk, *Gibson.**Fol. Dic. v. 4. p. 157. Fac. Col. No 137. p. 206.*

1757. December 16. FARQUHAR against SHAW.

EDWARD SHAW, the defender's brother, on the 16th March 1753, when on death-bed, wrote and accepted a bill, payable to David Shaw, for L. 20 Sterling, which seems to have been a legacy, or donation *mortis causa*, though bearing for value. This bill, it is said, remained in the custody of Edward Shaw, the acceptor, till his death, and was afterwards got up from among his papers, by the said David Shaw, not being then signed by him as a drawer.

David Shaw soon after adhibited his subscription as drawer to the bill, and indorsed it to William Farquhar for value received.

William Farquhar, in 1756, brought a process against the defender John Shaw, as representing his brother Edward, the acceptor of the bill, for payment of the contents.

The defence offered was, That the bill founded on was void and null, in two respects; *1mo*, As not having been granted for value, but by way of donation or legacy upon death-bed; *2do*, As not being signed by the drawer at the

No 119.

A verbal promise by a lesser, which induced the lessee to enter into a written agreement, not probable by witnesses.

No 120.

That a bill was granted on death-bed for a legacy, was not delivered, and was not signed by the drawer during the grantor's life; these facts found probable by witnesses against an onerous indorsee.