

the writs were so defaced that they were, in some places, scarce legible, and could never have been made up, had not the supreme authority of Parliament done it; and wherever a vitiated writ is produced *pessimum præsumitur* against the user. *Duplicated* for Pitcur, That he had the rules of law on his side; for *casum fortuitum nemo præstare tenetur; et ea interpretatio sumenda ut actus potius valeat quam pereat*, and l. 5. C. De fide instr. says, *iniquum est instrumentis vi ignis consumptis debitores quantitatum solutionem renuere*, and Pope Alexander III. capit. 3. extra de fide instrum. si in narratione tantum abrasce sunt non inde vitiatur. There was another circumstance urged against this bond, That Sir George, in the list of his debts owing by him, did not insert this bond, but mentioned Pitcur's bond in his list of debts owing to him; though it was said that men are not curious to propale bonds of this kind, to shun the disobliging of such friends as are omitted. THE LORDS, by a scrimp plurality, found this vitiated bond improbative and null; but there were three *non liquet*. If art or industry had any way appeared in the tearing this bond, all were clear it could prove nothing; but some had a conviction that it happened merely by chance and accident, without design. Yet the forecited law of the Emperor Gordian, l. 5. C. De fide instrum. says very well, "*non statim casum fortuitum conquerentibus facile credendum est.*"

Fountainhall, v. 2. p. 757.

No 225.

1729. February.

Duke of ROXBURGH *against* RUTHERFORD.

No 226.

It was found to be a nullity in an apprising, that the third sheet appeared, from ocular inspection, to have been made up and put in since the allowing of the apprising, though the apprising was offered to be supported by production of the letters and executions to which it was conform; which was not found relevant, it being sufficient to say, that *non constat* this was the apprising signed by the messenger; that the presumption was otherwise from the vitiation; and that therefore the writing can bear no faith. (*See APPENDIX.*)

Fol. Dic. v. 2. p. 153.

1753. January 9.

COUTTS and COMPANY *against* ALLAN and COMPANY.

No 227.

ON the 14th September 1754, Fairy, agent for Coutts and Company, wrote to Allan and Company, "Gentlemen, I acknowledge to have sold from 600 to 800 bolls of north-country meal, crop 1754, good and sufficient oat-meal, at 10s. 8d. Sterl. per boll, deliverable at the harbour of Irvine, as soon as wind and weather will allow; payable at Martinmas next, and the 1st January, in equal proportions."

The literal terms of an obligation corrected from the circumstances of the case. The crop of one year had been inserted when it was evident another was meant.]

No 227.

Of the same date, Allan, in answer to this letter, declared his acceptance of the bargain ; adding, that the meal should be delivered in three weeks.

Within the time appointed, Coutts shipped 600 bolls of meal, of crop 1753, from Portsoy for Irvine, and made offer of it to Allan.

Allan not having occasion for the meal, refused it, on this ground, That, in terms of the letter, it was not of crop 1754.

Coutts having brought a process against him, he founded his defence on the strict terms of the letters, which bound him to receive meal only of crop 1754.

Answered for Coutts, The words, " of crop 1754," had been put in by the inaccuracy of Fairy, instead of " crop 1753 ;" that crop 1754 could not be in the intention of parties, because it was impossible it could be delivered of that crop from Portsoy to Irvine in three weeks after the date of the letters ; seeing the gentlemens farm-victual in that country are not deliverable till betwixt Yule and Candlemas.

Replied, When an impossible condition is annexed to a bargain, the effect of it must be, to void the bargain altogether ; l. 31. Pand. De obligat. et act. ; Stair, lib. 1. tit. 3. § 7. ; and again tit. 10. § 13.

" THE LORDS found Allan liable for the price of the meal offered to be delivered."

Act. *Sir John Stuart, Ferguson.*

Alt. *J. Dalrymple, Lockhart.*

J. D.

Fol. Dic. v. 4. p. 125. Fac. Col. No 81. p. 144.

DIVISION VII.

Blanks in Writs filled up, at what time presumed.

1670. *January 15.*

Lady LUCIA HAMILTON *against* The Lands of DUNLOP and PITCON, and the CREDITORS of HAY of Montcastle.

No 228.

An inhibition found to reduce a disposition, because the dates, being filled up

LADY LUCIA HAMILTON being assigned to a bond of 4400 merks, granted by George Hay of Montcastle to the Earl of Abercorn, she inhibits the said George, and denounces, and apprises his lands of Birklands and others, and thereupon pursues reduction against Dunlop and Pitcon, and certain other creditors, in