

his residence in Ireland, especially in this case where he was not convened upon a debt due by himself before ; but the pursuer was to constitute a debt against him by his oath only. Replied, That ought to be repelled, because he offered to prove that his Lady remained in the country, ordinarily in the Lochwood ; and, where the wife is, there the family is understood to be ; likeas he himself uses yearly to come to the country once or twice, and the arrestment was made personally, he being within the country ; and further, he hath lands in the country, against which the pursuer desires only to have execution of his decreet, and not against his person. The Lords ordained the defender's procurators to take a day to produce him, or otherwise to be holden as confessed.

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1632. July 18.

TASSIE *against* FLEMING:

IN a reduction of an infestment of a tenement in Glasgow, in so far as concerned the pursuer's liferent, pursued by a woman, Tassie, against Fleming, *metus causa*, which fear was well enough qualified in the libel, both by threatening her and striking her ;—Alleged by the defender, He offered to prove that she had consented to the alienation, and that by the notary, maker of the alienation, and the witnesses insert in the same. Replied, That ought to be repelled, in respect of the libel, which she offered to prove ; *et plus creditur duobus testibus affirmantibus de metu, quam centum de spontanea voluntate*. Duplied, The defender, being a stranger, and not accessory to any thing done to her, is more favourable in this case, and ought to be preferred. After that the Lords had taken order to examine witnesses, *ex officio*, upon both sides, who did depone, as many for the voluntary consent the time of the subscribing of the alienation, as against it ;—yet the Lords preferred the pursuer in the probation of her libel.

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1632. July 25. URQUHART of BURGH-YARDS *against* ALEXANDER HAY.

URQUHART of Burgh-Yards pursued Alexander Hay for to repone him to an assignation which he had delivered to him, and whereunto he had put Mr John Kinnier's name, without the pursuer's knowledge. Alleged, It was delivered to him blank, to be used at his pleasure. Replied, Ought to be proven. Duplied, He offered to prove that it was delivered blank to him, but he needed not prove the last part, because the delivery of an evident blank in one's hand importeth as much as it is given to his use to whom it is delivered, except the person will prove, by his oath, whose faith he followed in delivering of it so blank, that it was not given him to his own behoof. The Lords found, he should prove not only the delivery of it blank, but likewise that it was given him to his own behoof, and that the presumption was not sufficient.

Next, He offered to prove it by the witnesses inserted in the assignation, and by the writer of the same. Answered, Only probable by writ or oath of party.