

by which it now appears it was the minister's victual, and he betook himself singly to Meikle, and did not look on Mr Smith as his debtor; and that thir were writs newly come to his knowledge, which sufficiently took off the defence of Competent and Omitted. And they alleging he knew of these papers at the time of the first decret, he has deponed *negativè*.

ANSWERED,—They opponed their decret *in foro*, which was plainly *res judicata*; and there is no decret safe, if the pretence of new-found-out writs be received to open the same; for as *L. 19 and 20 Cod. de Transact.* refuses to annul transactions *sub prætextu instrumentorum nuper repertorum*, so the same must extend to sentences, which are judicial transactions. And his oath was not *parte deferente*, but taken *ex officio judicis*: And the writs produced, though they were competent here, as they are not, yet are not relevant to infer Mr Smith was factor. For what hinders me to lift my debtor's money in Meikle's hand, if he take his hazard to rely on my warrandice?

The Lords thought it dangerous to loose decreets *in foro* on the pretence of writs *noviter venientes ad notitiam*, though offered upon oath; yet here they were not straitened to decide that point, but found the new writs founded on not relevant, though they had been proponed before sentence; and therefore sustained the *res judicata*: but appointed the partial payments Drummond had received from Meikle to be deducted and allowed; and found Smith only liable for the remainder of the price of the victual. *Vol. II. Page 513.*

1709. *July 15.* JAMES VALLANCE of POSSILLS *against* MACDOWALL of FREUGH.

[See the Report of this Case, Dictionary, page 5840.]

VALLANCE of Possills, having sent a letter of solicitation, in his action mentioned 14th current, to one of the Lords; and the same being produced to the Lords, as contrary to their acts and resolve, they sent him to prison, and had fined him, if he had not been very poor. *Vol. II. Page 516.*

1709. *July 15.* LESLIE and OGILVIE of NEWRAINE *against* LEITH of BELSHIRRY.

LEITH of Belshirry, supposing himself lesed by the interlocutors in the cause pursued against him by Leslie and Ogilvie of Newraine, obliging him to condescend and prove how he paid the price of that land, gave in his appeal and protestation for remeid of law to the Parliament. *Vol. II. Page 516.*

1709. *July 15.* The LAIRD of GRANT and CAPTAIN BRODY *against* JEAN M'LELLAN of BOUDEN.

I REPORTED Grant and Brody against Jean M'Lellan, relict of Bailie Bouden.