

No 211. "THE LORDS found, That the qualifications above-mentioned did sufficiently prove, that the blank assignation was purchased by money borrowed from Milncraig on Charteris, Irving, and Reid's bond, and that therefore the blank translation did belong to the said three obligants; and found no document or ground to presume that Irving or Reid did receive any relief or satisfaction for their becoming bound in Milncraig's bond, and therefore declared."

*Fol. Dic. v. 2. p. 152. Dalrymple, No 114. p. 158.*

\* \* Bruce's report of this case is No 16. p. 1671, *voce* BLANK WRIT.

No 212. 1728. December 7. CAMPBELL *against* COCKBURN.

THE question occurred about a bill accepted by two debtors, retired with a blank indorsation, and found in the custody of one of them, whether this possession did not imply that the money was paid by him alone, so as to found an action of relief against the other, or whether the presumption must run, that both contributed equally to the discharge, since it did not relate to either in particular? The last presumption was sustained. *See* APPENDIX.

*Fol. Dic. v. 2. p. 152.*

No 213. 1731. January 29. GORDON of Gartie *against* SUTHERLAND of Kinminnity.

AN heir of entail having, after the decease of the maker of entail, borrowed money, and having also paid the defunct's debts, the LORDS presumed, that the debts were paid out of the borrowed money, and therefore found, that the borrowed money was a burden upon the entailed estate. Against this a contrary presumption was *urged*, That if the money had been advanced to pay the tailor's debts, the creditor would not have failed to take an assignation to these debts for his security, which he not having done, the presumption ought to lie against him. *See* APPENDIX.

*Fol. Dic. v. 2. p. 152.*

1758. February 14. MAGNEIL *against* LIVINGSTON.

No 214. A WIFE, who had a small separate fund of her own, exclusive of her husband's *jus mariti*, having, by a trustee for her behoof, purchased in debts affecting her husband's estate; "the LORDS found, That the presumption was, that

these debts, as far as the purchase-money of them extended beyond her separate fund, had been acquired with her husband's effects." No 214.

*Fol. Dic. v. 2. p. 132. Fac. Col.*

\*\* This case is No 11. p. 4316. *voce* FIAR ABSOLUTE AND LIMITED.

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DIVISION VI.

Vitiated Writs when presumed Fraudulent, when Innocent.—An impossible condition in a Writ, presumed an error of the Writer.

1613. May 15. Lo. FORBES *against* SINCLAIR.

In an action of registration of a contract betwixt the Lo. of Forbes, and William Sinclair of May, the Lords assoilzied, because the contract was blank, in some parts interlined, riven almost through, and battered on the back, chiefly because the Lo. of May being examined by his oath *de calumnia*, granted, that he had craved the contract blank in the lines, which he had filled up sincesine, and that the same was made upon condition betwixt them, for sustaining of the burden of the Lo. of Drumbaith's debts.

*Fol. Dic. v. 2. p. 153. Kerse, MS. p. 45.*

1629. December 4. OLIPHANT *against* PEEBLES.

In a spuilzie of teinds at the instance of a tacksman, the tack bearing the entry to be in the year 1617, and that year being delete, and the year written on the margin to be *in anno* 1616, which margin bearing the entry, was not subscribed by the setter of the tack; whereupon the defender *alleged*, That it could not produce spuilzie, being so vitiate in the entry; notwithstanding whereof the tack was sustained; for it was found, that albeit it had no entry appointed therein at all, yet it might be sustained, for the tack was set by a parson of a kirk for many nineteen years, with consent of the patron, and tacks set during lifetime needed not to bear any time of entry, seeing it behoved to be understood, that the entry should be presently at the date thereof, except

No 215.

No 216.

A tack vitiated in the date of the entry, sustained, the entry having been presumed at the date of the writ.