

communers anent the eases, though there was no writ. The other party founded on decisions in Durie, 5th March 1628, M'Gill, *voce* WRIT; and the 5th of December 1628, Oliphant, No 7. p. 8400; and Stair, Montgomery of Skelmorly, No 25. p. 8411. where parties were allowed to resile, though some things were done in contemplation of the bargain, these being restored, and the parties reintegrate *in statu quo prius*.—THE LORDS here thought *res non erat integra* by the condescence made, and that the Bailie had committed no iniquity, and were therefore for remitting it back. Some thought there was no such *rei interventus* here, but what could be easily passed from, by giving back the writs and keys, and purging the house of the servitude imposed; and which fell of itself as null, being constitute by one who had no right.

*Fol. Dic. v. 1. p. 563. Fountainball, v. 2. p. 70.*

1700. January 31.

LAIRD OF INNES *against* The DUKE of GORDON.

CROGERIG reported the Laird of Innes against the Duke of Gordon, being a pursuit for mails and duties upon a wadset of the lands of Enzie, given by the Marquis of Argyle, when heritor or donatar for L. 15,000, as a part of Lady Anna Gordon's tocher with the Lord Drummond in 1639. *Alleged, 1mo*, The contract of wadset is null, being only subscribed by the Marquis of Argyle, and not by Sir Robert Innes; and mutual contracts are not obligatory, except where both parties subscribe them, its definition being *duorum vel plurium in idem placitum consensus*, which consent is requisite *ad perfectionem contractus*. *2do*, This Innes's retour is *ipso jure* null, bearing the lands to be holden of the King, whereas the wadset being base, it held of the Duke as come in place of Argyle, the donatar to the forfeiture, and so is by the wrong superior. *Answered* to the *1st*, The practice of subscribing at that time was, that the one party signed the one double and gave it to the other party, and he did the like with his, as is to this day used in England; neither can the Duke quarrel this, seeing Innes is willing to adhere to and own all his obligations in the contract. And Durie observes, that the LORDS, on the 9th of February 1627, M'Duff *contra* M'Culloch, No 16. p. 8406. found a contract subscribed only by one of the parties might be registrate and charged on by the other, he offering to sign it; and as to the retour, it is a sentence of 15 sworn men, and must stand till it be reduced, especially seeing the Duke produces as yet no right.—THE LORDS repelled the dilators.

*Fol. Dic. v. 1. p. 564. Fountainball, v. 2. p. 85.*

No 34.

No 35.

In an action at the instance of a wadsetter, it was objected, that the wadset was subscribed by the heritor only, not by the wadsetter. The objection was repelled.