

Part. 17 Novemb. 1627 *quibus contra Liphewood* 23 January 1629 *Crawford*
 contra L. Lamington. Because, if Defenders in Exhibitions of Writs referred
 to their Oaths, should depone only that they had them not since the Citation nor
 did at any Time, fraudfully put them away; they are Judges of what imports
 fraudful putting away, and so tempted to perjure themselves by Equivocation,
 and hereby defraud the Pursuer of his just Right: For the better discovery
 the Havers of Writs, Defenders in Exhibitions are now ordained further to depone
 if ever they had the Writs in Question, when and how they ceased to have them,
 and whether or not they knew who had them afterwards, or who had the same.
 22 Febr. 1688 Act of Seder. By which special Method of Examination, the
 Lords may Judge, whether the Deponent ceased to have them in a fair or decei-
 ful Way. Where Circumstances of Fraud appear. Witnesses are admitted in
 the Hearing before Citation, and that being proved the Haver is obliged to pro-
 duce them *desit possidere* 14 July 1686 Fountain and Brown contra Maxon
 A Bond of Provision by a Father in Favour of his Daughter bearing
 a Clause, that it should be effectual only in Case she married with her
 Mother's Consent, and were no Disgrace to her Father's Family; being deci-
 ded by the Father in his Lady's Trust, with Power to give it up or not as
 she saw Cause, and the Lady having burnt the Bond upon the Daughter's having
 married a Man without her Consent: The Bond was found unwarrantably de-
 stroyed the Daughter not having married to the Disparagement of her Father. In
 May 6 July 1712 Forbes and Dutton contra Lady Colclough. One of four
 Daughters of a Marriage having pursued their Father to annul the Contract
 of Marriage just betwixt him and their Mother, wherein he bound him and
 his Heirs to pay to the Daughters of the Marriage at the Terms and with
 Annualrent and Penally (as called) the sum of 2000 Pound Sterling equally
 among them And to pay to the Pursuer as one of these Daughters a fourth
 Part of the said sum; and the Father having depone upon the Libel referred to
 his Oath, that in his Minority, without Consent of his Curators signed a Contract
 of Marriage with the Pursuer's Mother, and about 15 or 16 Years ago cancelled
 both the Oath of it, and upon the Father's Death pendente lite, the Bond being
 transferred against his Son and Heir: The Lords found that the Contract was un-
 warrantably cancelled, and must be held as still extant in the Defenders Hand. Be-
 cause *quod solo desit possidere pro possessore habetur* l. 131. ff. de reg. jur. Which
 Rule is particularly applied in *Adrons ad exhibendum* l. 5. s. 2. ff. ad exhiben-
 dum. Seeing great Prejudice ariseth from the wilful destroying of Writs, especially
 Contracts of Marriage which may contain the Rights of Parties for many
 generations to come and are seldom recorded, but trusted with the Parents as
 common Depositories, and found the Quality in the Oath that Curators were
 not subscribing, is extrinsic and not probative, because it resolves in on
 Exception or Reason of Reduction arising from the Form of the Writ, and
 the Want of its Essentials, which could only be proved by Production of the
 Writ

Writ. Albeit the Defender to administrate the said Quality, produced the Libel in
 following upon the said Contract, which tho' it take in the Subscriptions of all
 the Parties concerned, mentions no Subscription of a Curator. Because the Ser-
 ving narrates the Contract to be entered into with Advice and Consent of Cura-
 tors undersubscribing; whence it is presumed that their Consent was admitted,
 and quod in se debet facere presumitur. And found it presumed that the said
 Contract was duly and formally made, and did contain Clauses of Provision
 in Favour of the Pursuer: Because the Defenders Father cancelled the
 Contract unwarrantably; and quod non presumitur contra verum in
 illius 16 July 1717 *Coffe contra Curator of Glasgow*. But the Lords
 did not determine what the Effect of that Presumption should be.
 Where Papers were put in the Hands of a Clerk of Session 10 Feb.
 1722 a Clerk Member of the College of Justice Mr Kenzie, Clerk of Session
 Cap. 5 by a Paper sealed in Name of Clerk's respective will get the Papers
 upon a Bill summarily, the Receiver making inventory of them and
 granting Receipt to the Haver, without being put to the Trouble to peruse
 or Adjoin of Exhibitions: Because Papers lodged in the Hands of a Clerk of
 the College of Justice are understood in Law, as in the Hands of the Person
 who trusts them. And an Advocate or Agent was found obliged to depone con-
 cerning the Haver of Clerk's Papers tho' his Oath was required to be
 depone of the Clerk, the Clerk was called in the Exhibition of Feb. 1688
 contra Rollocks. But Papers granted by Members of the College of
 Justice to third Parties, must be called for from them in an ordinary Exhi-
 bition of Exhibitions Mr Kenzie said. Sometimes Writings will be granted against
 Clerks, to produce not only Papers but Persons in their Custody, upon a Bill
 to the Lords representable but such Persons or Papers were not easily carried
 away, and that there is Danger of waiting the Dicta of an ordinary Exhibition.
 Mr Kenzie said.
 He whose Affairs are carried on prudently, tho' by some absent unaccept-
 = fully in his Absence, without his Knowledge or Authority from him, is liable to
 the Manager for his Necessary Expences. The Quasi-Contract producing this
 = obligation between him who managed the Affairs of an absent Person, and the
 said absent Person, is termed negotiorum gestio, introduced for the publick Ut-
 = lity. Because Men are often forced upon sudden Journeys, either without having
 opportunity or Time to appoint Agents or Factors to act for them in their Absence;
 or expecting suddenly to return neglect to do it, being detained abroad longer
 than they expected, their Affairs might grow wrong if some Friend did not
 without their Knowledge interpose to carry on their Business, or look after their
 Estates and Concerns, to whom the Conjurature of Affairs ~~is~~ Res. ~~is~~ effor-
 = ted an Opportunity of so doing. He whose Affairs had been well managed, in his
 = absence, is engaged to him who hath seen the Care of it to free and indemnify
 him as to the consequences of his Administration; as to pay for him what
 he