

No 181.

1675. July 3.

A. against B.

A DISCHARGE, alleged granted by a minister to one of the heritors of the parish of a part of his stipend, was quarrelled as false, and did appear to be vitiated, in a process at the instance of the minister for his stipend; and the user of the same being urged to abide by it, did offer to abide by it with a quality, viz. that the payment not being made by the heritor himself, (but by his tenant who took the said discharge in the heritor's name) he did abide by the same as a writ truly delivered by the tenant.

THE LORDS did not sustain the said quality, unless the heritor would produce the tenant, and abide by the same as being truly subscribed and not vitiated, which the tenant did.

Fol. Dic. v. 1. p. 455. Dirleton, No 291. p. 142.

No 182.

An assignee was suffered to abide by *qualificate*, but his immediate cedent was called and required to abide by simply.

1676. November 22.

PATERSON against M'KENZIE.

THE defender, in the improbation of an assignation transferred in his favours, being urged to abide by the same, and having offered to abide by the same as given to him for an onerous cause, and as true for any thing he knew, it was answered, That certification ought to be granted, unless the defender would abide by the same positively as a true deed; seeing otherwise, false writs might be conveyed through many hands, and the user of the same might escape *impune*, notwithstanding of the act of Parliament against the users of false writs, if they should be allowed to qualify their abiding by the same, in manner foresaid; which is contrary to the very notion of abiding by, which imports a positive asserting the truth of the same. Upon which debate, the LORDS considered the great inconvenience on either hand, if a right may be taken to false writs and used *impune*; whereas, before any person take right to the same, they ought to inform themselves concerning the same, and the condition and quality of their cedents; and on the other part, if commerce should be obstructed so far as a right should not be taken without hazard to papers, having no intrinsic nullity or defect, that of falsehood being altogether extrinsic, and which cannot be known,

THE LORDS, in respect the cedent, who had made the translation of the writ quarrelled, was living, ordained him to abide by the same simply; and suffered the person, who has now right thereto, to abide at the same with the foresaid quality; but reserved to themselves, at the advising of the cause, to consider what the said qualification may import in behalf of the user. *In presentia.*

Act. M'Kenzie & Others.

Alt. Falconer.

Clerk, Haystoun.

Fol. Dic. v. 1. p. 457. Dirleton, No 386. p. 189.