

1680. July 6.

The HEIRS and EXECUTORS of the Bishop of Galloway *against* JAMES JOHNSTON Writer to the Signet.

No 187.

In an improbation James offered to abide *qualificate* that the bonds were truly delivered to him, and he offered to depone he knew nothing of the forgery; and that, in the case betwixt The Earl of Leven and the Laird of Lammerton, No 174. p. 6753., the LORDS allowed the Laird to abide by the writs *qualificate*, as truly delivered to him, or found in his grandfather's chest. THE LORDS refused this. As also, this same day, in an improbation pursued by Aitchison and Harvy *against* Dr Keith's Children, the LORDS ordained the tutor of the pupils to abide by a discharge produced *simpliciter*.

Fol. Dic. v. 1. p. 455. Fountainball, MS.

1680. July 14.

GRAY *against* ROBERTSON.

GRAY of Skilbo pursues improbation *against* Robertson of Kindeis of a bond, whereunto the pursuer's father is made subscribing as a cautioner to the defender's father. The defender having produced the bond, and being required to abide thereby, desired to abide *qualificate*, viz. That this bond being granted to his father, he received it from his tutors and curators. THE LORDS would not allow to him to abide by *qualificate*, but allowed him to protest as he pleased, to exclude his accession to any forgery that should be found, at his own peril, viz. That he should be liable as an user of a false writ, unless he instructed the grounds of clearing his innocency. Now the bond being improven by two of the witnesses inserted to the cautioner's subscription, who deponed, That their pretended subscriptions were not their hand-write, nor did they see the cautioner subscribe, nor heard him acknowledge his subscription; whereupon the question arose, whether the forgery should be remitted to the justice-court, being so gross and palpable; leaving the defender to instruct before them his innocency, by proving, that he got the bond from his tutors or curators; but considering, that the justice-court doth wholly rest upon the Lord's decreets of improbation, when remitted to them,

THE LORDS resolved, before they would remit this improbation, they would admit the defender to clear himself, and instruct that he got the writ as now it is from his tutors or curators, and ordained them to be cited for that effect.

Fol. Dic. v. 1. p. 455. Stair, v. 2. p. 785.

* * * Fountainhall reports the same case:

1679. December 12.—IN the improbation pursued by Isobel Robertson and Findlay Frazer, her husband, *against* Colin Robertson of Kindeis, "THE LORDS upon a report found, That Colin behaved to abide *simpliciter*, and without

VOL. XVI.

37 X

No 188.

A defender was not allowed to abide by a bond *qualificate*, that it was granted to his father, and that he received it from his tutors; but the Lords declared, that if it should be found to be forged, they would allow him, for the purpose of clearing himself, to prove, that he received it from his tutors.