No. 44.

1696. *November* 11. PHILIP *against* ———

In the case of one Philip, the Lords refused to sustain a compensation founded in this manner: The discharge produced bears all counts and reckonings and debts betwixt them to be discharged, except a bond containing the sum of 50 merks, which is declared not to be comprehended under the generality foresaid; whereupon allowance was craved of that 50 merks. The Lords found, seeing it related to a bond which was not produced, this exception could neither constitute nor instruct the debt. But if such a clause related to a debt, without mentioning bond or ticket by which it was constituted, it might be more dubious; for in that case the rule, *non creditur referenti nisi constet de relato*, could not take place; and if there be nothing to instruct the debt but an exception in a discharge, the abstracting it frustrates the other of his mean of probation, which being an evident in another's hands, and liable to many inconveniencies, no man will rely upon it, without having some document and instruction of the debt in his own hands.

Fountainhall, v. 1. *p.* 733.

1699. *February* 9. BROWN *against* CRAW

No 45.
Certification in an improbation is not delayed by a depending proving the tenor.

The Lords entered to advise the proving of the tenor of a disposition of the lands of Blaikburn, pursued by Captain Brown, to stop a certification craved by Robert Craw, the lineal heir, in a reduction and improbation he had raised of that disposition. The *casus amissions* was libelled to be the English riffling his house in 1651; the adminicles were a sasine following on the said disposition, and the Notary's protocal book to fortify it; a disposition of moveables by James Brown, narrating, he had made a disposition of his lands, and all this backed with near 40 years possession. Answered, in the making up a writ, three things must be instructed, 1*mo*, The existence, that there once was such a paper *in rerum natura*, whether true or false; 2*do*, The verity of it; and, 3*tio*, Its solemnity and formality, for who knows what nullities it might labour with, as the want of writers name and witnesses; it might be burdened with a reversion, or many other clauses and reservations; so there is nothing more dangerous in the preparative, than rashly to sustain such tenors; for Haddington, in his decisions, gives an instance of one who forged a testament, and shewed it to severals, causing them read it, and afterwards destroyed it, and then raised a tenor to be made up by their oaths whom he had employed to read it*. And as to the adminicles here produced, by the act of prescription 1617, a sasine with 100 years possession signifies nothing where it wants a warrant; likeas it does not bear the witnesses' names when he repeats the precept; and the disposition of moveables is yet more suspect, for it has a marginal note adjected with another hand and different ink, relating to the mails and duties of the lands, which has been added only to serve a turn, and so

* See APPENDIX.