

No 196. should be liable for using it till the probation were taken, that it may appear how far he was accessory thereto. See the like in *Durie*, 5th February 1635, *Ker*, No 173. p. 6750. ; and *Stair*, lib. 4. tit. 20. § 19. Some thought it securer to oblige all to abide simply, but to allow them to protest to be heard at the advising, why they could not be liable.

Fountainball, v. 1. p. 646.

1697. *January 27.* Mr JAMES STUART *against* The LAIRD of LAMONT.

No 197.
An execution of a summons being challenged as being forged, the defender offered to abide by *qualificate*, that it was as received from the messenger. Obligated to abide by simply, but he might protest.

MR JAMES STUART advocate pursuing the Laird of Lamont for a debt, the defender offers to improve the executions of the summons, and craves the pursuer may abide at the verity of the same ; he offers to do it *qualificate*, that he truly received it so from the messenger. *Answered*, If this were allowed, it would open a manifest door to all forgeries, for the user would always escape. *Replied*, In writs signed by parties, this is not to be allowed ; but where it is done by a third party, it is hard that one should answer for a messenger's knavery whom he employed, seeing they find caution for their fidelity, and are liable ; and in *Wallace against The Viscount of Kingston*, *supra*, the LORDS found a party, producer of a notar's instrument, no farther obliged, but to abide at it as truly delivered to him. THE LORDS ordained him to abide at it simply ; but allowed him to protest that he should be no farther liable, unless his accession were proved ; and the LORDS at advising would consider how far his protestation should liberate him of the hazard of falsehood, as an user.

Fol. Dic. v. 1. p. 456. Fountainball, v. 1. p. 760.

1700. *January 24.* CHARLES FLEEMING *against* MARGARET NISBET.

No 198.
A disposition to a party's parent being challenged, the party offered to abide by *qualificate*, because granted before she was born. Obligated to abide by simply.

IN the improbation pursued by Charles Fleeming of Dalquharn, against Margaret Nisbet and John Veitch her husband, of a disposition granted to her father by Mary Sinclair, relict of Captain Ross in England, it was *contended* for her, That she ought not to be obliged to abide at the said writ simply, it being granted before she was born, and made use of by her father in his lifetime, and not then quarrelled as false ; and that in July 1661, betwixt Lamberton and the Earl of Leven, No 174. p. 6753. ; and in January 1666, *Graham contra Brian*, No 175. p. 6754 ; the LORDS permitted them to abide at them only *qualificate*, that they found them among the predecessor's papers, or being assignees, that they were truly delivered to them as real honest writs. But the LORDS considered, that the decisions since that time have expressly required that they should simply abide at the deed, otherwise falsities might easily escape punishment, by assigning the mover to another, and the act of Parliament 1621, cap. 22. speaks of users as well as forgers ; only the LORDS are in use to allow them to protest for what qualities they please, and to adduce what instructions they can, either to exculpate and alleviate, or to take off their