

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

accession *in toto*. See Young against Hay, No 195. p. 6766. Some of the LORDS thought this severe, where the writ had been produced several years in processes in their father's time, and never then quarrelled. But in regard this defender Nisbet was minor, and had neglected to take out her diligence for proving her articles of approbation, they did prorogate the term to her for executing the incident formerly granted.

No 198.

Fol. Dic. v. 1. p. 455. Fountainball, v. 2. p. 83.

1703. December 10.

RAE against BLACKWOOD.

SIR GEORGE WEIR of Blackwood being creditor to Corse in Glasgow, he arrests in the hands of John Graham and nine other persons supposed debtors to Corse; and after a long competition among the arresters, Sir George's diligence is preferred to them all, in so far as concerns the sum in Graham's hand. Then compearance is made for Bailie Rae in Glasgow, a co-creditor; and he propones improbation of Blackwood's execution of arrestment, and offers to consign, *urging* Blackwood may simply abide by the verity of the messenger's execution, containing nine or ten several persons, in whose hands he had laid on arrestments at Blackwood's instance. It was *answered* for Sir George, That though they were all contained in one execution, yet he made use of it for no other end but to reach and affect the sum in Graham's hand; and, in so far as concerned him, he was willing instantly to abide by the verity of the execution *sub periculo falsi* (though he was not bound to warrant messenger's deeds, whom he never saw nor knew,) but *quoad* the rest he was not insisting against them; and when he did so, it was time for Bailie Rae to urge him to abide at the truth thereof. *Replied*, That employers of messengers, and users of their executions, were as well obliged to abide simply as the messenger executor himself was; and it is not enough to abide with this quality, that it was truly so delivered to him; but here the whole ten being all in one context of an execution, if it was false *quoad* some of them, it must fall *quoad* Graham and all the rest, seeing such a judicial executive act cannot divide, even as a retour erroneous in one of the heads of the brieve falls as null *in toto*; and one of the witnesses here, called Millar, is known to have been accessory to sundry the like forgeries before, and has been convicted thereof. *Duplied*, Though the messenger, to hold in his pains of transcribing many copies, has put all the ten in one paper, yet the one has no manner of dependence upon the other; and *esto quoad* some of them the execution were false, yet that can never falsify or annul those that were truly done; and the arrestment is the same as if there had been as many separate and distinct executions, as there were different persons in whose hands the arrestments were used; in which case, it would be ridiculous to pretend, that because one of them is false, therefore those attested and asserted by the messenger in other executions are false too; and though Sir George has no ground to doubt the veracity of the whole, yet he is not obliged in this case to put ei-

No 199.

An arrestment was laid against ten persons, and all the executions put on one paper. The execution was used against only one of them, who challenged it. Found, that the user need only abide by with regard to that one execution.