was not probative in a criminal court: and so, their subscriptions being cancelled, they, on a reëxamination, went back from every thing they had said, pretending it was extorted from them by threats. But both of them denied it with such an air of guilt, that all were convinced of their villany; and the woman was so self-convicted, that to most of the questions she stood mute and dumb, obstinately refusing to answer, either in the affirmative or negative; which put the Queen's lawyers to recur to the indirect articles of falsehood, whereof their confessions, though cancelled, yet afforded a very strong presumption, as also the moulds and instruments found in his custody; which could admit of no other use: and that the wife tore sundry papers on her apprehension, and threw them in the fire. And it is very probable, if he had succeeded prosperously, and undiscovered, he would have proceeded to the forging other bank-notes of greater value.

The Lords, till farther discovery might be got, remanded them both to prison. And though some moved to make them close, it was remembered, that, by the Act 1701, anent wrongous imprisonment, they cannot be kept close, but advocates and others must have access to them: yet they ordained them to be put in separate rooms, and the goodman of the Tolbooth to have an eye who came to them, till such time as the Lords had opportunity to call them again, when more proofs may emerge against them. Being returned to prison, his conscience awakened on him for his prevarication, and could get no sleep all night, but desired to be brought before the Lords; which was done next day, where he made an ingenuous confession of his guilt, in forging the stamps and fabricating the bank-notes, and putting the accountant's and treasurer's subscriptions thereto, besides his writing the whole body of the bank-notes; which confession he judicially signed. And when the Lords shall come to advise it, and find the falsehood proven, that decreet of improbation, upon their remitting the pannel to the criminal court, will be *probatio probata* of the crime to the assize, without any farther adminicle or proof. *Vol. II. Page 605.*

1710. *December* 12. The Earl of Cromarty and Ross of Balnagown *against* Gray of Warriston.

Fraser of Beaufort being debtor to David Stewart, Commissary of Murray, in 616 merks; this bond is assigned to James Gray, merchant in Edinburgh, and he transfers it to young James, his son, who makes an assignation thereof in favours of the Earl of Cromarty; who craving payment of the debt from Beaufort, he produces a discharge of it from one Troup, a messenger, who had a factory and commission to uplift it from old James Gray, and had got the whole writs and progress delivered up to him by the said Troup. Cromarty, finding himself disappointed, pursues Robert Gray, now of Warriston, as representing his father and grandfather, who had contravened the warrandice, by assigning him to a debt whereof they had got payment.

Alleged,—The commission and factory produced, as granted by old James Gray, empowering Troup, the messenger, to uplift and discharge the money, is a null writ in law, having neither writer's name nor witnesses.

Answered,—They offered to prove holograph.

The Lords, before answer, allowed a conjunct probation, *comparatione literarum*, or otherwise, that it was all written and subscribed by the said old James. And sundry writs being adduced *hinc inde*, to evince the resemblance, or dissimilitude, of the writ; the Lords, after inspection of the fact, and shape of the letters, and air of the writ, generally thought they did not prove holograph.

Then it was CONTENDED, that, *esto* it were not holograph, yet, if it was subscribed by him, it was sufficient to sustain the commission: as was found *12th July* 1632, and *14th February* 1627, *Pyrnon* against *Ramsay;* and *8th February* 1671, *Earl of Northesk;* especially where the messenger had the principal writs in his hand, which easily infer a tacit mandate to uplift the money.

The Lords thought, creditors would trust messengers with their captions and other registrate writs, who would never allow them to uplift the money, and who would have more difficulty to draw it out of his hand than the debtor's; but, where they were trusted with principal papers, (as here he gave up both Gray's commission and Stewart's principal assignation to Beaufort, the debtor,) law presumes he had power to uplift and discharge: for, though a null paper cannot be supported nor adminiculated, seeing *non entis nullæ sunt qualitates*, yet it may presume his commission, where he has the principal writs: for captions and registrate bonds might be easily extracted, and the having them can never authorise a messenger to uplift. Though in poinding, if the debtor compear, and offer payment of the debt, the messenger may take it, and dare not proceed any farther in his poinding.

The Lords found, the messenger's having received from Gray the assignation and other principal writs; and having given a discharge, bearing his factory and commission from Gray, with his delivering up the haill writs to Fraser, the debtor; it proved against Gray, and was a contravention of the warrandice.

But it was then farther ALLEGED for Gray, that he could never be liable, because all the warrandice his father had given was only from his own and his heir's facts and deeds. But so it was, the commission was no deed of his father's, who granted the assignation to Cromarty, but was his grandfather old James Gray's deed.

ANSWERED,—You have conveyed to me the translation made by James to his son; which will virtually carry the grandfather's warrandice.

The Lords found, The commission not being granted by young James Gray, who is Tarbet's immediate author, but only by his father; and that he gives no warrandice in his assignation, but only from his own and his heir's facts and deeds: that therefore he had not contravened nor incurred the warrandice; and, for that cause, assoilyied him from this process of recourse. Perezius, *ad tit. C. de Procurat.* has a case parallel to this; that a procurator having his client's writs and evidents in his hands, presumes a sufficient mandate for that affair to which they relate, without producing a special mandate or factory for carying on that business. *Vol. II. Page* 605.

1710. *December* 15. JOHN DUFF *against* WILLIAM JOHNSTON of SHEINS.

MR William Johnston of Sheins being one of the principal tacksmen of the inland excise, he made Mr Robert Martin of Bruntbrae his sub-collector, in