

acquiescence, where there was none; and he appealed to the writ, which, *ex facie*, condemned itself; and in the quotation on the back, 13 was manifestly converted to 30; and if it were true, then Reid had paid L. 100 more than he owed, this being joined to the other partial payments, which none will believe of one of Mr Reid's stamp. *Answered*, All this dust is merely the effect of malice and revenge; for Mr Reid having discovered Lawrie's accession to the forging a disposition by one Pringle, he out of pique has raised this clamour, though he knows he got no less money than the discharge bears, and acknowledged the same before the two witnesses he has adduced: And it is unaccountable insolence in him to defame Mr Reid, who has carried himself candidly in two employments, as Sheriff-clerk of Haddington, and Regality-clerk of Dalkeith; and his good name and reputation are more sacred than to be so rudely attacked.—THE LORDS did each of them take inspection of the discharge, one by one, and seemed convinced that 13 was made 30; and, therefore, found it improbable. And the question being started, If it was not at least good for the L. 13 Sterling? the LORDS found it could not prove for a sixpence, being vitiated; but he would get Lawrie's oath as to the payment of that L. 13 Sterling, and where papers are unduly touched, they were *in toto* null.

Fountainhall, v. 2. p. 751.

1730. February.

ARROT *against* GAIRDEN.

No 41.

In a reduction upon the head of death-bed, a disposition was challenged as vitiated in date and place, and it was *argued*, That in a case of this nature, the date being *inter substantialia*, the presumption *juris et de jure* is, that the vitiation was done in order to avoid the challenge of death-bed. The defender offered to astruct the verity of the date by the instrumentary witnesses, which the LORDS sustained. In this case, the vitiation was of that nature, as scarce to admit of a suspicion of antedating. See APPENDIX.

Fol. Dic. v. 2. p. 214.

1741. July 17.

BROWN *against* CRAWFORD.

No 42.

In a process against the heir of the granter of a holograph writ, he was found obliged, upon the construction of the act of Parliament 1669, to depone upon the verity of his predecessor's subscription; the words of the act being, 'except the pursuer offer to prove by the defender's oath,' &c. by which it was not meant that an heir's acknowledging, that, in his opinion, it was his father's subscription, was relevant; for that would be no better than the opinion of any other witness who might know the defunct's subscription *comparatione*, and

No 42. would render the act of Parliament useless; but only that upon the construction of the act the heir is obliged to depone; and if he should acknowledge he saw his father subscribe, or the like, it would be the same as if the subscriber had, while in life, acknowledged his own subscription.

Fol. Dic. v. 4. p. 155. Kilkerran. C. Home.

* * * This case is No 26. p. 9417. *voce* OATH OF PARTY.

No 43.

1747. December 15. THOMSON *against* MAGISTRATES OF DUNFERMLINE.

A MINISTER pursued the Magistrates of a burgh for manse-mail, allocated to him by a decree of the Commissioners 1683. *Objected*, That the Minister produced only a copy of a pretended decree, with some receipts more than forty years old.—THE LORDS found, that a horning, of date 1685, upon the decree, was a sufficient title.

Fol. Dic. v. 4. p. 156. D. Falconer.

* * * This case is No 445. p. 11275. *voce* PRESCRIPTION.

1752. June 4. CAMPBELL *against* M'LAUHLAN.

This day the following case occurred in the Ordinary action roll.

No 44.
Whether, or in what case, a party's subscription to a missive letter, not holograph, can be proved by witnesses? And whether a cautionary obligation can be proved by witnesses?

LEITH, tacksman from Campbell of the lands of being to remove at Whitsunday 1751, and being in arrear of his rent, as also debtor to his master in the price of a certain quantity of bear, which he had bought from him off other farms, M'Lauchlan, who had let a farm to Leith, to which he was to go on his removal, was said to have written a letter to Campbell to the following effect: 'That understanding Leith, who was to remove, was debtor to him in an arrear of rent, as also for his farm-bear, as Leith was coming to a room of his, and could not presently pay, he desired he would let him bring away his effects, and he, M'Lauchlan, should be forthcoming for what Leith should grant bill for to him, upon stating their accounts.'

So it happened, that no account being stated between Campbell and Leith, Campbell pursued him for payment of what he owed before the Sheriff-depute of Argyle, and obtained decree for L. 25 Sterling, whereof Leith procured a suspension; and Campbell having, at the same time, pursued M'Lauchlan on his letter, and the process being conjoined with the suspension, M'Lauchlan's defence was, that the letter was improbative, not being holograph, acknowledging, at the same time, that he had subscribed a letter to Campbell, of the hand-writing of schoolmaster at in which