

scription of the bond was run, and the granter dead, and when it appears, filled up in a different hand, in the name of the granter's grandchild, Thomas Smith; whose heirs brought a reduction on it of a disposition by the debtor to the Maiden Hospital on the act 1621. The defence was prescription of the bond. Replied, Minority of Thomas Smith; and his minority was proved. Duplied, The assignee's name blank, and filling or delivery is not presumed. And notwithstanding all the suspicious circumstances, the Lords found that the filling up and delivery, of the date, was presumed, and found his minority must be deducted, though the assignation had not been intimate,—*renit. inter alios* Tinwald *et me* on the first point, 24th June.—30th July Adhered, seven to four.

No. 29. 1747, July 21. JOHN CAMPBELL *against* COLONEL HALKETT.

IN 1688 Earl Breadalbane got the Council's recommendation to the Treasury for L.300 sterling, which in 1693 he gave to Sir Peter Murray, Receiver-General, on his receipt and obligation to pay it if it should be allowed to him. In 1696 Sir Peter had his accounts allowed, in which was this L.300, and produced the recommendation with Breadalbane's receipt of the money subjoined to it. In 1736 the pursuer, as having right to this obligation, sued the defender, as representing the granter, the 40 years not being run from 1696. The defence was, the 20 years prescription of the obligation. Answered, The suit was not on that obligation, but on Sir Patrick's account with the Treasury, and he used the obligation only as evidence that he had not paid the money to the Earl. Answered, Without the obligation there is no foundation for an action, and action might as well be sued on a holograph bond on the narrative of having borrowed the money, after the 20 years. Minto, Ordinary, sustained the prescription, and this day we adhered, but were much divided, five against four, and the President. Against the interlocutor were the President, and Tinwald did not vote, Minto in the Outer-House, Arniston absent, as he has been all this Session,—14th January 1747. 19th February last, we altered the interlocutor of 14th January, and found the holograph obligation probative of the facts therein contained. But Colonel Halkett having in his turn reclaimed, we, 9th June, took the whole circumstances of the case under consideration, and thereon found that now no action lies upon the obligation. 21st July Adhered.

No. 31. 1749, Jan. 25. HARROWAR *against* WELLS.

A WRITTEN tack of 19 years being set in 1728, a bargain that the hay was set in steel-bow, not contained in the tack, was found proveable by witnesses, notwithstanding the 9th act 1669; and Kilkerran's interlocutor altered, and a proof before answer allowed, *renit.* President. I was in the Outer-House.

No. 32. 1749, June 28. WEMYSS *against* ALEXANDER CLERK.

IN 1721 Mr Wemyss put some bills for small sums with diligence on them in Alexander Clerk's hands, who was then a messenger, with discharges to the debtors, as was supposed, to execute the diligences, and in case of payment to give up the discharges; and he gave a receipt for the writings without saying for what use they were put in his hands, or