

1751. July 16.

CASE for HERDS.

No. 23.
Forgery.

Two persons of the name of Herd being accused of forgery, and particularly, *inter alia*, of forging the acceptance to a small bill by two other persons of the name of Officer; the Court would not receive these two persons as witnesses, though the complaint was only at Lord Advocate's instance, because they might gain or lose by the issue of the complaint, by getting free of the bill if it was proved, in which case it would be cancelled, or the defenders remitted to the Justiciary-Court.

1751. November 7.

JOHN FORRESTER'S CASE.

No. 24.
What constitutes
forgery?

JOHN FORRESTER'S circumstances failed, and to get a delay from the Rope-Factory, his creditors, he indorsed and sent them five bills drawn by himself and of his handwriting, bearing to be accepted by different persons; and as they could get no account of any of the pretended accepters except one James Cock, merchant at Crieff, who denied the subscription, and one Calpine, now dead, they accused Forrester in the Session of having forged them all. As to three of the pretended accepters, he could tell nothing either of the place of their residence, or where to be found; and as to almost all of the bills he owned that he had not given value for them, but got them as a fund of credit on giving his obligation to give goods for them. He owned that James Cock, merchant in Crieff, was not the accepter, but another James Cock, an innkeeper, whom he knew very well was not now to be found. The complainers took great pains to recover Calpine's genuine subscription, who had been a tobacco cutter, and broke at Glasgow, and went to Carlisle before the date of his bill; and Forrester's wife and friends were some of them convicted of taking great pains to suppress these genuine subscriptions, for which one Wells was punished last summer. (*Vide WITNESS.*) The Court was satisfied that none of the acceptances were genuine, but if it was only a *suppositio personæ*, that is a *species falsi*, yet they doubted if it was a forgery punishable capitally; but as there was but one James Cock, merchant in Crieff, and Forrester knew that the other was no merchant, we thought that though he had proved the bill to have been accepted by that other, yet still it was a forgery, and Forrester art and part; but as it appeared the design was to obtain a delay, and not that diligence should thereupon issue, we agreed not to remit him to the Justiciary-Court, (though