

1680. July 6.

The HEIRS and EXECUTORS of the Bishop of Galloway *against* JAMES JOHNSTON Writer to the Signet.

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In an improbation James offered to abide *qualificate* that the bonds were truly delivered to him, and he offered to depone he knew nothing of the forgery; and that, in the case betwixt The Earl of Leven and the Laird of Lammerton, No 174. p. 6753., the LORDS allowed the Laird to abide by the writs *qualificate*, as truly delivered to him, or found in his grandfather's chest. THE LORDS refused this. As also, this same day, in an improbation pursued by Aitchison and Harvy *against* Dr Keith's Children, the LORDS ordained the tutor of the pupils to abide by a discharge produced *simpliciter*.

Fol. Dic. v. 1. p. 455. Fountainball, MS.

1680. July 14.

GRAY *against* ROBERTSON.

GRAY of Skilbo pursues improbation *against* Robertson of Kindeis of a bond, whereunto the pursuer's father is made subscribing as a cautioner to the defender's father. The defender having produced the bond, and being required to abide thereby, desired to abide *qualificate*, viz. That this bond being granted to his father, he received it from his tutors and curators. THE LORDS would not allow to him to abide by *qualificate*, but allowed him to protest as he pleased, to exclude his accession to any forgery that should be found, at his own peril, viz. That he should be liable as an user of a false writ, unless he instructed the grounds of clearing his innocency. Now the bond being improven by two of the witnesses inserted to the cautioner's subscription, who deponed, That their pretended subscriptions were not their hand-write, nor did they see the cautioner subscribe, nor heard him acknowledge his subscription; whereupon the question arose, whether the forgery should be remitted to the justice-court, being so gross and palpable; leaving the defender to instruct before them his innocency, by proving, that he got the bond from his tutors or curators; but considering, that the justice-court doth wholly rest upon the Lord's decreets of improbation, when remitted to them,

THE LORDS resolved, before they would remit this improbation, they would admit the defender to clear himself, and instruct that he got the writ as now it is from his tutors or curators, and ordained them to be cited for that effect.

Fol. Dic. v. 1. p. 455. Stair, v. 2. p. 785.

* * * Fountainhall reports the same case:

1679. December 12.—IN the improbation pursued by Isobel Robertson and Findlay Frazer, her husband, *against* Colin Robertson of Kindeis, "THE LORDS upon a report found, That Colin behaved to abide *simpliciter*, and without

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A defender was not allowed to abide by a bond *qualificate*, that it was granted to his father, and that he received it from his tutors; but the Lords declared, that if it should be found to be forged, they would allow him, for the purpose of clearing himself, to prove, that he received it from his tutors.

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any quality, at the truth of the bond or writ he made use of; but allowed to protest for what quality he pleased, and to prove it as accords; viz. that he was minor, or an infant when the said bond was granted by Mr James Robertson, brother to the said Isobel, to his father, and so he could not be accessory thereto. And the LORDS, at the advising of the cause, would consider of the quality and probation thereof." This decision, though strict, yet seems just, for affrighting of falsaties. This was rather betwixt Kindeis and Gray of Skibo.

1680. *July 14.*—IN Gray of Skibo's improbation against Colin Robertson of Kindeis, (12th December 1679) "the LORDS having advised the witnesses' depositions, who positively denied their subscriptions, found the bond false, and improved it; but in regard he had made use of it, and in his abiding at it, affirmed he was but a child of six years old when it was subscribed, and that he got it from his tutors or curators, (seeing it might be lately forged and only ante-dated) they ordained his tutors and curators to be cited and examined, for trying the quality adjected to his abiding at the bond, and to purge his innocence;" which, if it were not this way cleared, they would straight remit him to the criminal court as a falsary. Thereafter, upon a bill given in by Kindeis, shewing, though they had concluded their improbation, yet he had a diligence running for proving several pregnant articles of approbation of these bonds given in by him, and that the witnesses tergiversed to come; therefore craved a further diligence, "which the LORDS granted to the 1st of November; and, in the mean time, ordained such as were in town to be examined.

1680. *December 8.*—IN the improbation, Gray of Skibo against Colin Robertson, Colin for proving his articles of approbation, adducing Francis Robertson his own bastard brother; and it being objected against him that he could not be admitted because of his relation, and though it was illegitimate, yet it could give no privileges, bastardy being ignominious; and he could be in no better case than if he were his lawful brother; yet the LORDS, for expiscating the truth, admitted him *cum nota*, though otherwise inhabile.

Fountainhall, v. 1. p. 69. 107. 121.

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1683. *February 14.*

MURRAY against MURRAY.

THE LORDS refused to remit a man to the justice-court as art and part, who had been the user of a false writ, though in an improbation, he had subscribed to abide by it, not being accessory to the forgery.

Fol. Dic. v. 1. p. 457. P. Falconer.

* * * This case is No 18. p. 4806.