

*parte substantiali*; and though it appears that this disposition has been drawn and designed for some other end and use at first, seeing it bears onerous causes, which is not presumed to have been given by a daughter *in familia*, yet what hindered the mother to fill up her said daughter's name in the blank, which held in the pains of transcribing and altering the writ? And this deed needed no clause dispensing with the not delivery; and they would design the witness, it being before the act of Parliament 1681, declaring the want of designation now unsuppliable.—THE LORDS sustained the reasons, and reduced the disposition, unless the defender, in fortification thereof, would offer to prove that her name was filled up therein, and was so read and seen when her mother was *in liege poustie*, and before she came to be on death-bed.

*Fol. Dic. v. 2. p. 214. Fountainhall, v. 2. p. 148.*

No 37.

1707. December 23.

IRVINE against MAXWELL.

GEORGE IRVINE of Stank being debtor to Halbert Irvine, drover, he pays him L. 100 Sterling of it, and obtains his discharge. Sir William Maxwell of Monreith, being creditor to Halbert, adjudges the right of that debt from him; and pursuing Stank, he founds upon his discharge; against which it was *objected*, That it is false, as bearing to be written by David Reid, and offered to prove it was not his hand-writ. *Answered*, This happened by pure ignorance and mistake; for a scroll of a discharge having been desired to be sent from Edinburgh, as a direction to the country writer to form it, the said David Reid accordingly sent a scroll to one; and, in copying it, he followed it so *verbatim*, that, instead of inserting his own name, he inserted David's, as if he had been the writer, and which is offered to be proved by the witnesses inserted, that it was truly so. *Replied*, By this confession, the deed is at least null, if not false; for it wants the writer's name, the writer inserted not having written it, and the true writer not being inserted. *Duplied*, In fortification of the discharge, Stank offered to prove the real numeration of the money at the time of the discharge, and that it were extremely hard for him to lose L. 100 Sterling, by so innocent and simple a mistake. *Triplied*, No such probation can be allowed against me, a singular successor; like as delivery of money is not probable by witnesses, seeing they may be ignorant upon what account, *quo nomine vel animo* it is done.—THE LORDS, seeing a declaration of Halbert Irvine, the debtor, that he truly subscribed that discharge, and that the probation was only craved to ad-municulate and support the writ, they allowed the instrumentary witnesses to be examined anent their seeing the money actually paid, for supplying the defect.

*Fol. Dic. v. 2. p. 215. Fountainhall, v. 2. p. 406.*

No 38.

A discharge was copied by a country writer *verbatim*, inserting the name as writer of the man of business in town, who had sent the scroll. The instrumentary witnesses were allowed to be examined relative to the actual payment of the money.