

1710. February 11. IRVINE *against* MACJORE.

No 39.  
Found to  
conformity  
with the  
above.

A PROTEST for remeid of law is given in by Irvine of Stank against Macjore and other merchants in Dumfries. Stank having paid L. 100 Sterling of a debt, a copy of a discharge was sent from Edinburgh to be a pattern, which bore these words, "Written by James Reid, writer in Edinburgh." Stank having given this to be transcribed by an ignorant boy, he copies it *verbatim*, and inserts the foresaid words, as if it had been written by Reid, without the altering this clause, and putting in his own name in place of it. When this discharge was produced before the Lords, it was quarrelled as not only wanting the true writer's name, but containing a false one. The error was acknowledged on both sides; but the Lords being tied up by the 179th act of Parliament 1593, behoved to find it null. But it being offered, for supporting it, to prove the numeration by witnesses present, which the Lords allowed; but they being dead or absent, Stank succumbed; so decret passed against him, and he thinking himself wronged to pay a sum twice, caused his daughter give in this appeal, not being in town himself. This is the first I have seen presented by a woman.

*Fol. Dic. v. 2. p. 215. Fountainball, v. 2. p. 567.*

1712. July 9. LAWRIE *against* REID.

No 40.  
A writ, where  
the sum was  
changed from  
a less to a  
greater, not  
allowed to be  
supported by  
evidence, to  
any extent.

THOMAS REID, Clerk of Dalkeith, being debtor by bond to Alexander Lawrie, merchant there, in 1000 merks, and being charged, it was suspended on the reason of arrestment, and other grounds; but the arresters having consented, decret went forth, and partial payments followed; but, in their accounting, a difference arose about a discharge bearing L. 30 Sterling, whereas, Lawrie contended it was only L. 13, and that the word *thirteen*, by manufacture, was turned into *thirty*, and offered to improve it as false, altered, and vitiated; whereon the Lords put them both under caution, Lawrie the charger to insist in his complaint, till the final termination of it; and Reid, that he should answer all the diets of process; and allowed either party a diligence to cite the instrumentary witnesses, and others, to clear the matter of fact, viz. for Lawrie to prove that the receipt quarrelled was only granted for L. 13 Sterling, and Reid to astruct its verity, and that truly L. 30 Sterling was paid down at that time; and; accordingly, the witnesses in the discharge deponed they saw no more but L. 13 Sterling. Two extraneous witnesses adduced by Reid deponed, that they were present at a counting betwixt them, where Lawrie acquiesced that he had got the whole L. 30 Sterling. This probation coming to be advised, Lawrie *alleged*, That he had fully cancelled and redargued the verity of the discharge, and by the only proper competent witnesses present at the numeration; whereas, the others deponed on words they might easily mistake for an

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.

No 40.

*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