

to clear the intention of parties ; in which the haver may fill up, not only dispositions or assignations to all the granter had, but even treasonable declarations, or what else he thinks fit,—is of dangerous consequence.

*MS. page 1.*

1713. *Nov. 25.* PATRICK M'DOWAL of Freugh *against* M'GHIE of Balmaghie.

JOHN M'GHIE having pursued Patrick M'Dowal, for proving the tenor of a bond granted by Sir Alexander M'Culloch of Myreton, as principal; Godfrey M'Culloch, his son, James M'Culloch of Mool, and the deceased Patrick M'Dowal of Freugh, the defender's father, as cautioners ; to the deceased Alexander M'Ghie of Balmaghie, the pursuer's grandfather, for the sum of 1800 merks : in the year 1670, the principal bond being produced out of the register of Kirkcudbright, where it had been recorded in the year 1684, in a very lame condition; carrying the subscription of Freugh, the cautioner, but only the initial letters of Alexander M'Culloch the principal debtor's name, the rest of it being worn away: The Lords found, that a fair extract of the said bond, with other adminicles produced, made it presumed, that the bond was whole and entire at the time of the registration ; the defender having owned the bond to have been a true deed, but alleged only that it was cancelled when put in the register. The adminicles assigned to abstract the verity of its never being cancelled, were these, 1. Any defect in the bond seemed to proceed rather from ill keeping than out of any design to cancel or discharge it : and the registers of the court had been unduly kept. 2. Sir Godfrey M'Culloch, as principal, after his father, Sir Alexander's death, and Murray of Burghtoun, as cautioner, did, 29th October, 1679, corroborate the bond, and in December, 1681, the former granted a bond of relief to Mool, one of the cautioners in the original bond. For payment of the debt in controversy, diligence by horning and denunciation was used in the year 1684, inhibition in the year 1685, and adjudication in the year 1687; and one of the cautioners had promised payment, a matter of fourteen days only before the registration. The Lords considered that an extract out of a lawful register, makes faith in all cases except in *causa falsi* : because of the presumed fidelity of the keeper of a public office, who, till the contrary be proved, is not to be supposed to have recorded a cancelled writ, though he is not obliged to know whether a writ, apparently formal, be true or false.

*MS. page 5.*

1713. *Nov. 26.* Executors of HUGH BLAIR, late Dean of Guild of Edinburgh, *against* Colonel FRANCIS CHARTERS.

IN a process, at the instance of the executors of Dean of Guild Blair, who was donator of Thomas Row's escheat, against Colonel Charters, for payment of L783 Scots, contained in a bond, and L.400, contained in a subscribed account for clothes furnished by Thomas Row to the defender, a decret having been pronounced :