

The Lords refused to take notice of a reclaiming bill presented by him, after the days allowed for reclaiming by the Act of Sederunt, 8th July, 1709, were elapsed; albeit the complainer had raised and executed a reduction of the interlocutor.

*MS. page 5.*

1713. *November 27.* DUTCHESS of BUCCLEUGH *against* SIR DAVID NAIRN.

SIR DAVID NAIRN and Mr. David Scrimzeor having dealt together in bills of exchange betwixt London and Edinburgh for some years, and, for conveniency, mutually transmitted their accounts in single sheets, by the ordinary post: the balance due by Sir David, in those from July, 1687, till June, 1697, transmitted by him to Mr. Scrimzeor, partly written by Sir David's own hand, partly by his servant's, was L.2409, 14s. 1d. Sterling; and in those transmitted by Scrimzeor to him, L.2542, 1s. 8d.; and Sir David's letter to Mr. Scrimzeor, dated 11th November, 1697, bore,—“ I observe that the balance of your account due by me, as you state it, is L.2542, 1s. 8d., and as I state it, is L.2409, 14s. 1d. By which it would appear, that I have omitted several articles to my own prejudice. If you can point me to these errors, I will make it easier. I desire you will insert whatever you think you ought to have credit, or be made debtor for: which would bring the matter to a narrower close; whereas now the whole account stands open.” The Dutchess of Buccleugh, as executrix-creditor to Mr. Scrimzeor, pursued Sir David for the balance aforesaid, of L.2409, 14s. 1d.; and insisted upon the fore-said accounts and letters, as vouchers of the balance.

ALLEGED for the defender,—That the accounts are not probative, but still open: being sent down only as a scheme or scrolls to lead another to a right account; and the letter an appeal to the books of both parties.

ANSWERED for the pursuer,—It is true that the accounts, not being fitted and signed, are not so unalterably probative as not to suffer rectification upon discovery of any omission, or wrong stating of an article. But they are probative against the transmitter, and make up a charge against him *presumptione*, till red-argued by him.

The Lords found, That the schedules and letter founded on by the pursuer are not of themselves probative to instruct the charge, but that the same ought to be otherwise proved.

*MS. page 6.*

1713. *December 4.* THOMAS STUART of Fintilloch *against* JOHN M'WHIRTER, Elder of Garrihorn.

IN the complaint, at the instance of Thomas Stuart against John M'Whirter, concluding damage for his granting commission to John M'Whirter, younger of