

No 205. ject; the rather, that each of these opinions seemed to have decisions in its favour; that, further, the said decision observed by Fountainhall in 1697, Forrester against Rowat, did not seem well to agree with another, observed by Stair, June 19th, 1677, Binning against Gibson, *voce* PROCESS, though appearing to proceed upon the same principle: And that, last of all, occasion might be given to mention, that in so much did the Lords consider this as an unsettled point, that, to the effect the lieges might be at a certainty when it might be safe to propone improbation, they remitted to three of their number to bring in an act of sederunt, settling when a party, by proponing falsehood, is barred from proponing or recurring to other defences, and when a party may propone other defences, after abiding by.

*Kilkerran, (IMPROBATION.) No. 4. p. 281.*

No 206.

Abiding by *qualificate* is in desuetude. Abiding by must be simply; but a protest may be taken, containing facts, indicating innocence of accession, which, when proved, will divert the consequences.

1743. December 7.

ROBERTSON *against* ALISONS.

ROBERTSON having charged on a bill accepted by John, Robert, and James Alisons, it was suspended on the following grounds, as to James Alison, that the acceptance was not duly signed by him. Robertson refused to abide by the bill simply, but only *qualificate*, as to that acceptance, that the bill accepted by James Alison had been brought to him by Robert, who had got the money. It was agreed, that abiding by *qualificate* was entirely gone into desuetude, for this reason, that, when such practice was allowed, a forger might be secured from punishment, because the fact, or qualification condescended on, might be proved to be true, which destroyed the effect of the abiding by, and yet, in fact, the person not be less guilty. The Court was of opinion, that the person ought to abide by the deed simply, *et non qualificate*; but under protest, that, notwithstanding of his abiding by the deed as a true one, he might be at liberty to prove the various facts and circumstances, which might shew how the deed, which he believed to be a true one, came into his hands; and, in that case, although the deed should be forged, yet, if the facts and circumstances contained in the protest appeared to be true, the abider by would not be liable to punishment, either as a forger or user of a false deed.

THE LORDS allowed Robertson to abide by the deed, not *qualificate*, but under protest.

*Fol. Dic. v. 3. p. 313. MS.*

No 207. 1747. June 16.

A. *against* B.

Two persons being joint creditors in a bill, and charging thereon, a bill for the precise same debt was produced by the debtor, retired, and given up by one of the partners, which occasioned mutual processes of improbation.