

was no *corpus delicti*, that there was already a certification against it as to all civil effects, and the actual forgery could only be tried by the Court of Justiciary. The Lords notwithstanding gave a diligence to prove, for they thought that a pursuer who had got a certification in absence, perhaps against a party out of the kingdom, but who at the same time could prove the actual forgery, could not be obliged to rely wholly on the validity of his certification, but might bring his proof of the forgery in case the writing should afterwards appear, whether the forger could be punished or not; and in Barclay's case they took the proof, as is observed by Sir George M'Kenzie, and Lord Stair, 26th January 1670. (See No. 37. *voce* WITNESS.)

No. 31. 1753, Feb. 8. HUMPHRY PARSONS, &c. *against* JAMES SMITH.

SMITH was accused by Humphry Parsons, &c. executors of John Brown, and his Majesty's Advocate, of forging a receipt by Brown to him of about L.69 sterling in part payment of two accepted bills due by him to Brown, which receipt was written by Smith and said to be signed by Brown the day before he was cut for the stone, whereof he died. We had evidence of the forgery quite convincing, though there could be no direct proof, at the same time that Smith seemed by the proof to have had the character of an honest man, and though a very low man, a carrier, yet had great trust in the country. We found the receipt forged, but would not remit him to the Justiciary, but gave the same judgment as in Forrester's case, viz. pillory and transportation for life. Forrester's case is marked 7th November 1751, (No. 24.)

No. 32. 1753, March 2. ALEXANDER IRVINE *against* RAMSAY.

IN 1743 Mr Alexander Irvine of Sapphock, Advocate, entailed his estate on a series of heirs, of whom this pursuer was one, but reserved powers to alter. In December 1744 he married his only daughter to Ramsay the defender, settling marriage articles with Sir Alexander Ramsay of Balmain at a country change-house called Gilliebrands near Aberdeen, whereby he settled the property of his estate on Ramsay, and after the marriage a formal contract of marriage was executed with a small variation that he insisted on in favours of his daughters, but even during his life he did not seem pleased in his own mind with the terms of the contract. However, he lived in perfect friendship with his son-in-law Mr Ramsay and with his daughter, (who at her marriage wanted four weeks of eleven years of her age) and as he was declining fast in his health and strength, gave Mr Ramsay a factory for managing his affairs, and died in the end of November 1746. The young Lady and her husband lived also in perfect harmony together till her death in 1750, and she made over to him a pretty considerable personal estate that descended to her by her father's death, but by her death and the death of the other intermediate heirs, Alexander Irvine, son of John Irvine, Writer in the Chancery Office, who became next heir by the entail 1743, pursued reduction of the marriage-articles and contract of marriage with Mr Ramsay on the head of fraud and circumvention, as well as of incapacity of Sapphock by reason of his many infirmities,—and a very long proof before answer was brought on both sides, which was advised the 25th June 1752. The qualifications of fraud were very numerous, the Lady's non-age, the father's incapacity, at least great weakness, the machi-

nations on the part of the defender, at least of his uncle Sir Alexander Ramsay to bring about the marriage, the place where the articles were settled *remotis arbitris*, and the great inequality of these articles were at length insisted in. The Court were greatly divided, almost quite equally, and at last it carried by the President's casting vote, to find the reasons of reduction relevant and proved. Ramsay reclaimed, and his petition with the answers were advised 15th November 1752, when one of those who voted for the pursuer was not in Court, whereby the Court then was quite equally divided, so that it came to the President's casting vote and carried to find the reasons of reduction not proved. Then the pursuer in his turn reclaimed, and his petition with the answers were advised 2d March 1753, when the late President had left the Court through sickness, after which he never returned,—and Drummore, who was in opinion for the defender was in the chair, and the Court being again equally divided, the last interlocutor was altered and the first adhered to, so that notwithstanding the cross interlocutor none of the Judges appeared to have altered their opinions. For reducing were the late President, Milton, Kilkerran, Justice-Clerk, Dun, Shewalton, Woodhall. Against the reduction were Minto, Drummore, Haining, when in Court, Strichen, Murkle, Kames and I. This case I did not think worth marking at the time, because in reductions on fraud and circumvention, the circumstances of every case arise very different from all others, that it is scarce possible that one case such as this can be a precedent for others, and every case must be judged by its own merits. But Mr Ramsay having appealed, and the House of Lords having on Lord Chancellor's motion reversed our decree without any contradictory voice 10th December 1743,—the account Lord Advocate (who was counsel for Irvine) gave of Lord Chancellor's speech, (and none of the other Lords spoke any) was such as I thought deserved to be marked. He offered his opinion with the more freedom that the question turned not on any particularity of the law of Scotland but on fraud, which is the same in all countries and all Courts.—He allowed that the meeting at Gilliebrands looked ill, and justly stirred the attention of the Court of Session, and that the articles then signed appeared harsh and unequal, but that in all his practice he never saw a total reduction or setting aside of marriage-articles where marriage actually followed or took effect, and mentioned one noted case where that was attempted without success, though there was a strong inclination to give relief to the heir, who was of the Poet Wycherley, who had an estate settled on the heir, not alterable, but a power reserved to give a jointure to a wife, and Wycherley being disobliged with his heir married a young woman on his death-bed, in purpose to load his heir with the jointure, by the means or procurement of a young man, who soon after Wycherley's death actually married the widow. Yet Lord Macclesfield, assisted by Lord Ch. J. Pratt and King, with the Master of the Rolls, after solemn hearing, thought they could give no relief.—N. B. This case was argued at the Bar of the House of Lords three days.

(The date in the Notes MS. is 25th June 1753, and follows the date 14th December 1753.)

#### No. 33. 1753, Dec. 21. WILLIAM STEWART'S CASE.

WILLIAM STEWART was accused by summary complaint by his Majesty's Advocate of being accessory to the forging a bond by the late Lochiel to his brother Fassefern, whereon a claim was entered, being writer and one of the witnesses, as the bond is recited