

1684. *March.* NICOL *against* NEWLANDS.

No 193.

IN an action of improbation at the instance of Nicol *against* Newlands, of a bond of cautionry in a suspension, the LORDS allowed the defender to abide at the verity of the bond of cautionry, that he received it from the clerk of the bills, whose duty it was to receive such bonds of cautionry.

*Fol. Dic. v. 1. p. 456. Sir P. Home, MS. v. 1. No 596.*

1687. *February.* LAIRD of WATERTON *against* ROBERT INNES.

No 194.

THE LORDS refused to allow a qualified abiding by; but found, That the defender might protest for the quality, and prove the same.

*Harcarse, (IMPROBATION and REDUCTION.) No 570. p. 158.*

1692. *November 12.* YOUNG *against* HAYS.

No 195.

Found competent to abide by, with the quality that the party had received the deed blank in the creditor's name for onerous causes.

When one refuses to abide by, nothing can be done except to declare the deed false, on account of the presumptive evidence; but where one has abidden by, he cannot rescind, or qualify.

THE LORDS, upon Alexander Young, merchant in Edinburgh, his petition against Colonel Hay's daughters, found he might object that quality to his abiding by the truth of the bond, which they offered to improve as false, that he received it blank in the name, for onerous causes, but saw it it not subscribed; and the LORDS, at advising the articles of falsehood, would consider if the quality was pertinent to assoilzie him *a pœna falsi in toto*, or *pro tanto*; and that *hoc loco* they would declare nothing; for however an assignee may be permitted to abide *qualificate*, it was not so reasonable, that the party to whom the bond is granted should have the same allowance.—But this case of a blank-bond differs, being originally granted to a third party.

1695. *November 15.*—IN a charge at Alexander Young merchant in Edinburgh, his instance, against Mrs Christian and Elizabeth Hays, on a bond for L. 1200 Scots, granted in 1667, whereof they proponed improbation, the instrumentary witnesses, in their oaths, wavering much anent the verity of their subscriptions, and the LORDS considering how far Alexander, the producer and user, had abidden by the verity thereof, they found he had first abidden by it simply, as a true and real deed *sub pœna falsi*, but afterwards he had adjected a quality and protestation that he had received it from one Robert Fraser, for most onerous causes, blank in the creditor's name, and thought himself *in bona fide* to fill up his own name in the same, and craved he might be allowed to abide at its verity only in these terms; and the LORDS had permitted him to adject any pertinent quality, he always proving the same; so the question arose, whether he ought to get a term to prove the manner how he came by the said bond, or if he could be forced to abide simply at it, so as if it should be improved, he behoved to be remitted to the Criminal Court, either as a forger or user. For the LORDS