

cient for him ; much more he having once actually been a messenger ; unless they could prove, by the pursuer's oath, that they knew he was not qualified when they employed him : but recommended to the king's advocate to pursue the messenger, and get him punished for officiating without being qualified.

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1694. *January 31.* JANET HAMILTON and SAMUEL WINRAM, *against* COCHRAN of Ruchsoles.

PHESDO reported Janet Hamilton, and Samuel Winram, her husband, against Cochran of Ruchsoles : Ruchsoles shunning to implement his back-bond, in paying the 2800 merks for the comprising disposed to him by the said Janet, in respect she had not procured a sufficient right and disposition thereof from her husband ; and particularly, that it was not the same, nor equal in substance, with the first draught, in so far as it bore not warrandice from their authors as well as their own facts and deeds.

ANSWERED, *1mo.* Forrest, the author, had consented. *2do.* It bore a clause, that the debt was truly owing and unpaid ; which explication imported warrandice against the author's deeds.

REPLIED,—That the debts might be owing, and yet incumbered with inhibitions on the author's deeds.

The Lords found, there was no necessity of a specific implement, and that this disposition was equal in substance with that in the back-bond ; and so was a performance *per equipollens* : and repelled the other objections about the witness, that they were unknown, unless they offered to improve it as false ; and thought it unnecessary to determine, whether the procuring her husband's second disposition, after the day prefixed in the back-bond, was receivable, seeing the first point cleared all. And severals thought, seeing there was no irritancy, the failie was still purgeable, notwithstanding of the elapsing of the day, unless he condescended upon damage he had sustained by the delay ; which he could not, farther than that he apprehended he had made an ill bargain, and was now content to be free of it : but *res non erat integra*, for he had bought in another apprising from Carrin, which strengthened his right, and there were others offering to transact with her, when he bought this apprising from her ; and so there was no more *locus penitentiae*.

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1694. *January 31.* GRAHAM *against* ARNALD.

MERSINGTON reported Bailie Graham against Stephen Arnald in Roan. The Lords found his letter, bearing a mandate and commission to buy a ship, very scrimp ; yet, considering the mercatorian style, they sustained it, being conjoined with Graham's proving that Arnald, in prosecution of that letter, obtained a pass to the ship (licensing it to trade to France,) from the Marquis de Seignelay, the French secretary ; because the letter bore more than a naked purpose and resolution to enter into a society trade ; but was conditionally conceived, if he