

duction and improbation of a disposition made by their father to the said Robert of his whole estate and moveables; and the instrumentary witnesses being examined, two of them acknowledged their subscriptions, but confessed they did not hear the defunct disponer give warrant to the notaries to subscribe for him; and the third denied it was his hand-write, or that he was at Pople-mill (where it bears to be signed,) at that time.

The Lords, at advising, were clear to find the writ null, and not probative; but stuck as to the falsehood, seeing two of them acknowledged they signed as witnesses in presence of the disponer, and only the third denied his subscription; and, before answer to the falsehood, or remitting them to the criminal court, ordained all the parties on life to be cited, at the King's Advocate's instance, to be reëxamined for expiscating the falsehood, if any be; for the Lords observed, where the parties got the writs reduced, they thought themselves no further concerned to insist any more, and declined, the expense of prosecuting the criminal part.

*Vol. II. Page 12.*

1696 and 1698. JAMES BAYNE *against* JAMES SCOT'S HEIRS.

1696. *January 16.*—HALCRAIG reported James Bayne, the King's master-wright, against the Heirs of James Scot, writer to the signet, for payment of a sum contained in a contract for rebuilding Hugh Boyd's burnt land. ALLEGED, The said contract is discharged. OBJECTED,—That the discharge is vitiated, and some words delete which excepted that contract.

The Lords, before answer, ordained the writer and witnesses of the discharge to be examined if the same was only in relation to the top-storey, as also the commoners and trysters betwixt them since, if they did not hear James Scot acknowledge that as a debt even subsequent to the discharge.

*Vol. I. Page 701.*

1698. *November 9.*—The Lords advised the process betwixt James Bayne and the Children of James Scot, writer to the signet, mentioned *supra*, page 701. They were pursued in a poinding of the ground upon an infeftment forth of Boyd's land. The DEFENCE was, Bayne had discharged the debt. It was ANSWERED,—The discharge was vitiated and scored, and related to another bargain of additional work, and not for the four storeys mentioned in the contract of building. And the lawyers being this day heard on the presumptions on both sides, the Lords were much divided, as in a case of divination. Three or four were *Non liquet* and unclear; but the plurality found the discharge null and not probative, though the rasure was not *in loco substantiali*; yet the writer declared, at the subscribing, he remembered of nothing then delete or vitiate; and that it was a writer to the signet framing a discharge of the infeftment without a formal renunciation; which was the only legal way to extinguish the real right against Bayne's singular successors, if that had been the thing *actum et tractatum* betwixt them. On the other side, it was both hard and dubious to take away a discharge, the subscription whereof was not denied, but ascribed to another cause of an additional bargain, upon so slender grounds.

*Vol. II. Page 12.*