

must be presumed to have been written either without her warrant, since it was produced in process, or else to have been done *spe numerandæ pecuniæ*.

REPLIED,---Memorials, though unsubscribed, are probative, especially writs in count-books, or notes on the backs or foots of bonds, though not written with the parties' own hand, nor subscribed by them; as Stair observes, *Institut. book 4. tit. 42.*

The Lords thought this case singular, and were inclining to sustain the discharge on the back of this bond to assoilyie from the 200 merks, in regard it was of a very old date, more than thirty years ago, and never quarrelled all that time: But it being suggested that the creditrix in the bond died shortly after the date of the said discharge, therefore they remitted to the Ordinary to try when she died, and if it was ever questioned in her lifetime.

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1702. *January 15.* JAMES NASMITH *against* SIR ALEXANDER COCKBURN of LANGTON'S CREDITORS.

MR James Nasmith of Dawick, advocate, gives in a petition, representing that he, being a considerable creditor to Sir Alexander Cockburn of Langton, had raised a process of sale of that estate; but George Lockhart of Carnwath, another creditor, having also raised a sale, the petitioner then lay by: but Langton having transacted with Carnwath, his process ceased; so that the petitioner has now wakened his summons, and is ready to insist and prove the rental, which Langton, with much industry, has darkened; and this, being the joint interest of all the creditors, ought to be carried on upon the common expense, and not on the private charges of one single creditor; therefore craving that a sum of money, suitable to that exigency, may be advanced to him by the factor, for which he is willing to hold count.

The Lords considered, Though this used to be granted in all roups, yet here they remembered that there had been sundry modifications given already for carrying on this sale, and therefore it was hard to burden either the debtor or the creditors with new advances till they saw how the former was expended, or if it was yet extant in Carnwath's hands, ungiven out; and, if his sale expired, whether he, or his creditors, should be at the loss of that expense now terminated by his transaction; therefore they ordered that to be first tried.

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1702. *January 27.* ALEXANDER WEIR *against* JAMES SIMPSON.

ALEXANDER Weir, as procurator-fiscal for the manufactories, having seized on some prohibited stuffs, conform to the late Act of Parliament, in the house of James Simpson, merchant in Edinburgh, he pursues a declarator to have them confiscated and burnt, as falling under the prohibition. Simpson, the defender, craved his oath of calumny, if he had reason to pursue that libel. Weir CONTENTED,---That, in thir popular actions, he was not obliged to swear *de calum-*