

. See Swan *against* Swan, Fac. Col. 30th June 1786, *voce* OATH OF PARTY.

See Brand *against* Anderfon, 9th February 1711, *voce* BLANK WRIT.

See Neilfon *against* Bruce, Kilkerran, p. 70. *voce* PACTUM ILLICITUM.

See Thistle Bank *against* Leny, *voce* PROOF.

See Campbell *against* Graham, p. 1120.

See Alifon *against* Crawford, *voce* WRIT.

S E C T. IX.

Acceptance.

1702. June 25.

MAN *against* WALES.

IN a reduction, upon the act 1696, of a disposition granted by a creditor, as in prejudice of the pursuer, a prior lawful creditor, it was *objected*, That the pursuer was not a prior lawful creditor, being creditor by a bill drawn the same day the disposition was granted; and accepted without a date. *Answered*, The acceptance must be presumed of the same date with the bill; being among parties living in the same town.—THE LORDS refused to sustain this presumption.—(See The particulars, p. 1006, 1083, and 1183.)

Fol. Dic. v. 1. p. 97.

No 68.

Acceptance not presumed of the date of the bill.

1725. July 8.

Mr JOHN KENNEDY of Kilhenzie, *against* Captain HUGH ARBUTHNOT of London.

MR KENNEDY raised a process against Captain Arbuthnot, as heir to Kennedy of Balterfan, for payment of three bills accepted by Balterfan, to which he had right.

It was offered, *in defence*, for Mr Arbuthnot—That he being an heir, the bills did not prove their dates against him; but were presumed to have been granted on death-bed, in the same manner as holograph writs; and, therefore, he was not liable, unless the pursuer could instruct, that the bills were accepted when Balterfan was in *liege poustie*, or sixty days before his death:—And the defender *argued*, That, by express statutes, all writs of importance should bear writer's name and witnesses; otherwise they should be void; and that such kind of obligations ought not to afford action against an heir, unless it could be proved, that they were owned by the acceptor, and seen before he was on death-bed; which appeared evident from the parallel of holograph writs, which have no effect against an heir, unless they are proved holograph; and, of a date, before the granter came on death-bed: That there was greater opportunity to improve a holograph writ than a bill, which, for ordinary, has no other attestation, but the simple signing of the debtor's name.

No 69.

An accepted bill found to prove its date against the acceptor's heirs.