1675. *December* 10. Bryce and her Spouse *against* Kirkpatrick.

No 36.

Edward Kirkpatrick having obtained decreet against Janet Bryce, she and her husband suspend on this reason, that the Sheriff found a promise probable by witnesses. It was *answered*, That the suspender having granted a bond in the first husband's time, and promising in her viduity to pay it, without quarrelling the nullity, the witnesses were receivable, in respect of the adminiculation of the writ.

The Lords found, that seeing the bond was null, given by a wife *stante matrimonio*, her promise to fulfil it in her viduity was not probable by witnesses.

Fol. Dic. v. 2. *p.* 216. *Stair, v.* 2. *p.* 378.

*** Dirleton reports this case:

A woman being pursued upon a bond, and having *alleged* that it was null, because she was *vestita viro*; the *reply*, That she promised payment after her husband's decease, though the sum was only L. 100 Scots, was found not to be probable by witnesses.

Reporter, *Glendoich.*

Dirleton, No 317. *p.* 155.

1702. *February* 19.

Isabel Livingston and John Nairn *against* Helen Livingston.

No 37.
A disposition originally blank in the name, and filled up with new ink, was reduced, unless it could be proved, that it had been filled up, and so read to the granter *in liege poustie.*

Tillicoultry reported Isabel Livingston, and John Nairn her husband, against Helen Livingston her sister, and relict of William Crawfurd.—It is a reduction of a disposition of a tenement of land made by Isabel Simpson, their mother, in favour of the said Helen, at the instance of the said Isabel, as heir-portioner served to her mother. The reasons were, that, by ocular inspection, the name of the receiver of the disposition has been originally blank, and appears to have been lately filled up with new ink, though it is dated in 1671; that it has been designed for a man, it all along bearing *his*, which is now vitiated, and made *hers*; that, for 25 years the mother lived, there was never a syllable of this right, nor for two years after, and was found blank in the name among the mother's papers by the said William Crawfurd, who intromitted therewith, and has been filled up by him with his wife's name, and so was never a delivered evident, nor did so much as bear a reservation of liferent to the mother, the granter, and certainly has either been filled up on death-bed, or after her decease; and one of the two subscribing witnesses is not designed.—*Answered*, Its being blank is of no moment, being long before the act of Parliament discharging blank writs; neither does the vitiation import, not being *in*

parte substantiali; and though it appears that this disposition has been drawn and designed for some other end and use at first, seeing it bears onerous causes, which is not presumed to have been given by a daughter *in familia*, yet what hindered the mother to fill up her said daughter's name in the blank, which held in the pains of transcribing and altering the writ? And this deed needed no clause dispensing with the not delivery; and they would design the witness, it being before the act of Parliament 1681, declaring the want of designation now unsuppliable.—The Lords sustained the reasons, and reduced the disposition, unless the defender, in fortification thereof, would offer to prove that her name was filled up therein, and was so read and seen when her mother was *in liege poustie*, and before she came to be on death-bed. No 37.

Fol. Dic. v. 2. p. 214. Fountainhall, v. 2. p. 148.

1707. *December* 23. Irvine *against* Maxwell.

No 38.
A discharge was copied by a country writer verbatim, inserting the name as writer of the man of business in town, who had sent the scroll. The instrumentary witnesses were allowed to be examined relative to the actual payment of the money.

George Irvine of Stank being debtor to Halbert Irvine, drover, he pays him L. 100 Sterling of it, and obtains his discharge. Sir William Maxwell of Monreith, being creditor to Halbert, adjudges the right of that debt from him; and pursuing Stank, he founds upon his discharge; against which it was *objected*, That it is false, as bearing to be written by David Reid, and offered to prove it was not his hand-writ. *Answered*, This happened by pure ignorance and mistake; for a scroll of a discharge having been desired to be sent from Edinburgh, as a direction to the country writer to form it, the said David Reid accordingly sent a scroll to one; and, in copying it, he followed it so *verbatim*, that, instead of inserting his own name, he inserted David's, as if he had been the writer, and which is offered to be proved by the witnesses inserted, that it was truly so. *Replied*, By this confession, the deed is at least null, if not false; for it wants the writer's name, the writer inserted not having written it, and the true writer not being inserted. *Duplied*, In fortification of the discharge, Stank offered to prove the real numeration of the money at the time of the discharge, and that it were extremely hard for him to lose L. 100 Sterling, by so innocent and simple a mistake. *Triplied*, No such probation can be allowed against me, a singular successor; like as delivery of money is not probable by witnesses, seeing they may be ignorant upon what account, *quo nomine vel animo* it is done.—The Lords, seeing a declaration of Halbert Irvine, the debtor, that he truly subscribed that discharge, and that the probation was only craved to adminiculate and support the writ, they allowed the instrumentary witnesses to be examined anent their seeing the money actually paid, for supplying the defect.

Fol. Dic. v. 2. p. 215. Fountainhall, v. 2. p. 406.