

## FALSA DEMONSTRATIO.

1716. February 19.

ELIZABETH DICKSON, and PATRICK HERIOT her Husband, *against* Mrs ISOBEL LOGAN.

**I**N the action at the instance of Elizabeth Dickson, and her Husband, *contra* Mrs Isobel Logan, mentioned 22d December 1710, *voce* WRIT, the defender craved to be preferred to a bond for L. 1000 owing by the Marquis of Tweeddale to Mr John Dickson her husband, dated in *anno* 1696, and assigned by him to her in the contract of marriage.

*Replied* for the pursuer; She, as executrix to Mr John Dickson, ought to have the bond, in respect the assignment in the defender's contract of marriage doth not agree with the date of the bond, which assigns L. 1000, due by the Marquis of Tweeddale by bond in the year 1606.

*Duplied* for the defender; The bond assigned in the contract doth exactly agree with that in question, as to the sum and debtor, and the harmless obvious error in the date, which is not essential to a writ, can never annul the assignation; which relative writ would have been good *ubi constat de relato*, as here, though the date was still blank, seeing it cannot be pretended that there was any other L. 1000 bond granted by the Marquis of Tweeddale to the defender's husband, far less that he granted a bond to him in the year 1606, when neither of them was born.

*Triplied* for the pursuer; An error in the date of a writ, when the question concerns the date, as here, is essential; and there is a great difference betwixt a blank date and a wrong date. Nay, in the case betwixt Walter Abercrombie and Innes of Dunkinty, the LORDS found an error in the christian name of a witness to an assignation sufficient to annul it; albeit the designation was right, *constabat de persona*, and the mistake was evident. *See* WRIT.

THE LORDS preferred Mrs Isobel Logan the assignee.

*Fol. Dic. v. 1. p. 294. Forbes, p. 501.*

**No 1.**

A person assigned to a bond for a certain sum owing to the cedent, by a person still living, which bond the assignation bore to have been granted in 1606, was found to have right to the like sum in a bond granted by the same person to the cedent in the year 1696, as another bond for the like sum *inter eosdem* in 1606, could not be descended on, and neither of the parties was then born.