scription of the bond was run, and the granter dead, and when it appears, filled up in a different hand, in the name of the granter's grandchild, Thomas Smith; whose heirs brought a reduction on it of a disposition by the debtor to the Maiden Hospital on the act 1621. The defence was prescription of the bond. Replied, Minority of Thomas Smith; and his minority was proved. Duplied, The assignee's name blank, and filling or delivery is not presumed. And notwithstanding all the suspicious circumstances, the Lords found that the filling up and delivery, of the date, was presumed, and found his minority must be deducted, though the assignation had not been intimate,—*renit. inter alios* Tinwald *et me* on the first point, 24th June.—30th July Adhered, seven to four.

No. 29. 1747, July 21. John Campbell *against* Colonel Halkett.

In 1688 Earl Breadalbane got the Council's recommendation to the Treasury for L.300 sterling, which in 1693 he gave to Sir Peter Murray, Receiver-General, on his receipt and obligement to pay it if it should be allowed to him. In 1696 Sir Peter had his accounts allowed, in which was this L.300, and produced the recommendation with Breadalbane's receipt of the money subjoined to it. In 1736 the pursuer, as having right to this obligement, sued the defender, as representing the granter, the 40 years not being run from 1696. The defence was, the 20 years prescription of the obligement. Answered, The suit was not on that obligement, but on Sir Patrick's account with the Treasury, and he used the obligement only as evidence that he had not paid the money to the Earl. Answered, Without the obligement there is no foundation for an action, and action might as well be sued on a holograph bond on the narrative of having borrowed the money, after the 20 years. Minto, Ordinary, sustained the prescription, and this day we adhered, but were much divided, five against four, and the President. Against the interlocutor were the President, and Tinwald did not vote, Minto in the Outer-House, Arniston absent, as he has been all this Session,—14th January 1747. 19th February last, we altered the interlocutor of 14th January, and found the holograph obligement probative of the facts therein contained. But Colonel Halkett having in his turn reclaimed, we, 9th June, took the whole circumstances of the case under consideration, and thereon found that now no action lies upon the obligement. 21st July Adhered.

No. 31. 1749, Jan. 25. Harrowar *against* Wells.

A written tack of 19 years being set in 1728, a bargain that the hay was set in steel-bow, not contained in the tack, was found proveable by witnesses, notwithstanding the 9th act 1669; and Kilkerran's interlocutor altered, and a proof before answer allowed, *renit.* President. I was in the Outer-House.

No. 32. 1749, June 28. Wemyss *against* Alexander Clerk.

In 1721 Mr Wemyss put some bills for small sums with diligence on them in Alexander Clerk's hands, who was then a messenger, with discharges to the debtors, as was supposed, to execute the diligences, and in case of payment to give up the discharges; and he gave a receipt for the writings without saying for what use they were put in his hands, or

any obligement. Clerk has not for many years officiated as a messenger, and in 1744 Wemyss sued him to deliver back the writings or pay the contents. Clerk could not remember what became of them, whether he returned them to Wemyss who lived at Aberdeen, whereas Clerk lived at Inverness, or if he gave them up to the debtors on payment, and sent the money to Wemyss, or if they were aasually lost or mislaid, but was positive that one of these was the case. Kilkerran found him liable for the contents of these writs; but on a reclaiming bill we thought it dangerous on such receipts to sustain action against officers of the law after so great a distance of time;—and therefore this day found that no action could be sustained.

No. 33. 1749, Nov. 10. HENRY ELLIOT *against* WILLIAM ELLIOT.

See Note of No. 22, *voce* FRAUD. The Notes written upon the Petition for Henry Elliot (drawn by Pitfour) to which Lord Elchies alludes, are as follow:

THIS is a reduction on the act 1621 of a disposition in 1692 by James Scott of Bristo, with consent of James his son, to William his second son, of the lands of Kirklands, Antram, and others, on the narrative of a certain sum of money paid; and again disponed by William, with consent of the said James his elder brother, to Thomas Porteous in 1695, on which he obtained charter and sasine in 1696, disponed by him to William Elliot in 1723, on which uninterrupted possession has followed from 1692, at least since 1696,—at the instance of Henry Elliot, as having right by progress from his grandfather John Elliot of Thorleshope, to the half of a debt of 3000 merks due by the said James Scott the father; the other half of which debt, which was conveyed by Thorleshope to John Elliot, his second son, is found prescribed *non utendo;* but the pursuer's half, which was conveyed to his father Henry the third son is saved from prescription by the petitioner's minority which lasted about 20 years;—and as the defender pleads the positive prescription, the question is, whether it bars this action of reduction notwithstanding the pursuer's said minority. In this same process there is a reduction of a disposition to Sir James Stuart in 1699 by the same William Elliot, of other parts of the lands disponed to him by his father in 1692. But as Sir James could not qualify the positive prescription in terms of the act 1617, the Lord Justice-Clerk repelled the negative prescription in respect of the pursuer's minority, but sustained the positive prescription for William Elliot, and assoilzied him notwithstanding the pursuer's minority;—and this is the only point now before us,—and the papers are filled with many circumstances not material to the point at issue. The interlocutor is long and fully recited in answers *in principio,* and for the fact I may read answers page 3 to page 9 *in fine.*—I own I think the pursuer can make little of this process. Whether the disposition 1662 was on death-bed does not signify, since James the heir consented; and I doubt much if the defender ought to be obliged at this distance to astruct the narrative of that disposition; for though the law is jealous of narratives among near relations unless they be otherwise astructed, yet it requires only such an astruction as may *fidem facere judici* but not a full legal proof; but to carry that jealousy so far, as to oblige them to astruct them at the distance of 50 or 60 years would be to require proofs that for the most part would be impossible, where there had been no challenge in that time. 2dly, Though Thomas Porteous who purchased from William