

1751. July 16.

CASE for HERDS.

No. 23.  
Forgery.

Two persons of the name of Herd being accused of forgery, and particularly, *inter alia*, of forging the acceptance to a small bill by two other persons of the name of Officer; the Court would not receive these two persons as witnesses, though the complaint was only at Lord Advocate's instance, because they might gain or lose by the issue of the complaint, by getting free of the bill if it was proved, in which case it would be cancelled, or the defenders remitted to the Justiciary-Court.

1751. November 7.

JOHN FORRESTER'S CASE.

No. 24.  
What constitutes  
forgery?

JOHN FORRESTER'S circumstances failed, and to get a delay from the Rope-Factory, his creditors, he indorsed and sent them five bills drawn by himself and of his handwriting, bearing to be accepted by different persons; and as they could get no account of any of the pretended accepters except one James Cock, merchant at Crieff, who denied the subscription, and one Calpine, now dead, they accused Forrester in the Session of having forged them all. As to three of the pretended accepters, he could tell nothing either of the place of their residence, or where to be found; and as to almost all of the bills he owned that he had not given value for them, but got them as a fund of credit on giving his obligation to give goods for them. He owned that James Cock, merchant in Crieff, was not the accepter, but another James Cock, an innkeeper, whom he knew very well was not now to be found. The complainers took great pains to recover Calpine's genuine subscription, who had been a tobacco cutter, and broke at Glasgow, and went to Carlisle before the date of his bill; and Forrester's wife and friends were some of them convicted of taking great pains to suppress these genuine subscriptions, for which one Wells was punished last summer. (*Vide WITNESS.*) The Court was satisfied that none of the acceptances were genuine, but if it was only a *suppositio personæ*, that is a *species falsi*, yet they doubted if it was a forgery punishable capitally; but as there was but one James Cock, merchant in Crieff, and Forrester knew that the other was no merchant, we thought that though he had proved the bill to have been accepted by that other, yet still it was a forgery, and Forrester art and part; but as it appeared the design was to obtain a delay, and not that diligence should thereupon issue, we agreed not to remit him to the Justiciary-Court, (though

the President thought he deserved it) and found the bill with an acceptance by James Cock, false, feigned, counterfeit, and forged, by the said Forrester, and found the other five bills false and feigned, and therefore reduced them. (See No. 31. *infra*.)

No. 24.

1752. January 16. DUNLOP *against* CRUICKSHANK, &c.

FORBES and CRUICKSHANKS, merchants in Aberdeen, in Company, commissioned some lawns from Dunlop in Holland, and the letters were sometimes signed by both, sometimes only by one of them; and in a post or two after their last letter, Forbes alone commissioned some spirits, but so as to give Dunlop reason to believe it also in Company, writing in the plural number "we," and directing the marks to F. C., the initial letters of their two names, and wrote him that next day he was to take journey for Holland, which he did; and Dunlop shipped the spirits as directed, and sent the invoice and letter of advice to Cruickshanks and Forbes in Company. Forbes was then broke, and diligences against him begun; and he wrote to his friend Jopp at Aberdeen to receive and dispose of the spirits because he could not be home in time, which letter, and Dunlop's to Cruickshanks, came by the same post. Cruickshanks that very night gave the invoice to Jopp, and wrote to Dunlop that he had no concern in the spirits; and in a day or two the ship arrived on the coast with the spirits, and Jopp sold them partly to Dunlop himself and partly to sundry others. Cruickshanks bought of them about L.70 worth, deliverable at the mast, and which he sold with another parcel of his own on board the same ship, and got from Jopp a discharge of the price, and Jopp was creditor to Forbes in more than the value of the whole spirits. Forbes returned from Holland, and after a very short stay went to the West Indies, and his creditors arrested in the hands of Jopp, Cruickshanks, and sundry others, and pursued forthcoming, concluding also against Cruickshanks as partner. After a proof brought, at advising some of the Lords thought there was sufficient evidence against Cruickshanks of the copartnery, and there seemed indeed cause to suspect it, but the Court found the evidence not sufficient. The next point was Forbes's fraud, for that he was broke before giving the commission, and I should have thought the reason of reduction good had the spirits been extant, but as they were sold, my difficulty was the same as in the case of Christie, No. 20. *supra*. But I thought that here there never was a sale completed. Dunlop understood the commission to be from Cruickshanks and

No. 25.

*Effect of dolus  
dans causam con-  
tractu.*