

SECT. XII.

Penalty of falsifying Writs.

1597. February.

KEIR against PARDOWIE.

No. 343.

In an impro-
bation of a
precept of
sasine, it be-
ing found
rased, and
falsified in
the name of
one room,
was declared
false as to
that particu-
lar, but sus-
tained in other
respects,
because one
of the parties
whom it con-
cerned, was
not *particeps
doli*.

The Laird of Keir pursued the Laird of Pardowie younger, William Hamilton, and certain others to hear and see ane precept of sasine of certain lands alleged given by the said Laird of Keir to the said young Laird of Pardowie improved; whereanent probation being deduced, it was found that the said precept was vitiated and falsified in the name of ane special room and steading of land. After advising of the cause, it being pronounced against the said William Hamilton, who produced and abode by the said precept that the same was false, and forged in that part concerning the said special room, (the precept being otherwise true and not quarrelled as falset in the hail, but of erasure and falsification of that point;) the Laird of Keir alleged that the precept behoved to be decerned false in the hail, because the defender had used the said precept in judgment, it being falsified as said is. The Lords found, that they would nowise decern the said precept to make no faith in the remanent heads against young Pardowie, because it was tried that the said precept was a true deed, and only falsified in that point, *sine facto aut culpa* of the young Laird of Pardowie, and therefore assoilzied him frae the hail rest, except the particular room erased.

Haddington MS. No. 620.

1636. February 10. EDMISTON against SYM and SKEEN.

No. 344.

A bond was
antedated in
order to save
it from inhi-
bition.
Fonnd null
in 1710.

One Edmiston, and Rutherford her daughter, pursuing reduction and impro- bation of a bond made by umquhile Alexander Sym, Rutherford's husband, to Mr. Alexander Skeen, of 3,000 merks, as done after the serving of inhibition, used by the said Alison Edmiston, mother-in-law to the said Alexander Sym, and by the said Anna Rutherford her daughter, spouse to the said Alexander Sym, raised upon their contract of marriage; wherein the said Mr. Alexander Skeen compearing, and alleging, that the wife, nor her mother, (for the husband was called as defender in this process, for his interest) had no interest to reduce, or improve this bond, upon this ground libelled, as that it is false in the date thereof, seeing it bears a date before the inhibition, albeit the pursuers offered them to improve the same *in data*, being as they alleged, done after the inhibition; for

eliding of the which interest, he was content that the said bond should be holden as done after the inhibition, and that the inhibition should not be prejudged thereby, nor yet the pursuer her contract of marriage, nor no head therein contained. The Lords nevertheless found, that the pursuer might improve the obligation in the date thereof; which being so improved, they found that it should fall in toto, and that it ought not to be respected, as a bond made after the inhibition, nor of any other date than it bore, *quia quod non est verum de data, quam præ se fert, præsumitur non esse omnino verum, nec ullo tempore fuisse gestum.*

No. 344.

Clerk, *Hay.**Durie, p. 793.*1688. *February.* ANDREW JOHNSTON *against* JOHNSTON of Lockerbie.

No. 345.

In an improbation of the date of a marginal note wanting witnesses, the Lords found, That the user might prove it by the pursuer's oath, without necessity to abide at it, as in the case of positive falsehood; and that though the pursuer should not by his oath acknowledge the date, the marginal note would only fall, and not the whole writ, upon the brocard *falsum in uno falsum in omnibus*, which holds only in positive falsehoods, at least *in articulis connexis*. And here the subscription to the marginal note was not denied, but only it was quarrelled as not of the date of the body of the writ.

*Harcarse, Na. 575. p. 159.*1723. *November 26.*M'DOUALL of Garthland *against* REPRESENTATIVES of KENNEDY of Glenour.

No. 346.

A bond being produced vitiated in the sum by a superinduction of pounds for merks, was refused to be sustained for the original sum, but found null *in toto*. See APPENDIX.

Fol. Dic. v. 2. p. 554.

Writ how far Probative? See PROOF.

Vitiated writs how far Probative? IBID.

Vitiation whether presumed Fraudulent or Innocent? See PRESUMPTION.

Blanks when filled up? See PRESUMPTION.

Delivery when understood made? IBID.

Deeds taken in name of Third Parties, if good without Delivery? IBID.

Deed of Importance signed but by one Notary, Will it be sustained for £100? See INDIVISIBLE.

Incomplete Deeds affording room to Resile; See LOCUS PŒNITENTIÆ.

What Proof relevant to do away the effect of Writ; See PROOF.

See No. 46. p. 1445. and No. 11. p. 1352.

See APPENDIX.