that if an heir of tailyie, tied up with a clause irritant, in case of his contracting debt, should pay an old debt contracted by the maker of the tailyie, with money borrowed from another hand, and give to the lender an heritable security upon the estate for the same; that real right would be good and effectual, notwithstanding of the clause irritant, if the new creditor could prove that his money was so applied. To which the case of the Lord Kinnaird was objected, who having, with money borrowed by himself, cleared debts that affected his estate before it was tailyied, found himself under a necessity, after advising with the best lawyers, to apply to the Parliament for empowering him to grant security, or sell land to pay off these creditors whose money had been applied to satisfy these debts with which the tailyie had been burdened. But it was answered, that in the Lord Kinnaird's case, the new creditors were not able to prove that their money was applied to the payment of the old debts. Others of the Lords supposed that a creditor taking bond from his debtor inhibited, in implement of a debt due before inhibition, the new security could not be reduced *ex capite inhibitionis*, if the creditor could prove that anterior onerous debt to which that security was surrogated. Another Lord delivered his opinion thus: The creditors here being ignorant not only of what had passed betwixt father and son, but also of their condition and insolvency, and having *ignorantia facti* given up the old securities; *condictio chirographi indebite traditi* was competent to them by law; so that there being just ground for calling back the securities innovated, the pretended innovation doth evanish. *Page* 713.

1713. *Nov.* 17. William Robertson, one of the under Clerks of Session, and George Cruickshanks *against* the relict and children of William Melvil.

John Halden of Myreton, having caused Margaret Cruickshanks, his wife, sign her name upon a blank half sheet of paper, before two subscribing witnesses, wherein, after her death, he filled up an assignation to a bond of 2000 merks, granted by George Anderson of Foxtoun to the said Margaret Cruickshanks; William Robertson, to whom she had formerly assigned the said bond, with a faculty to alter, and George Cruickshanks, her executor *qua* nearest of kin, raised a reduction of the assignation in favours of John Halden, against the representatives of William Melvil, to whom it was transferred by Halden for an onerous cause.

The Lords reduced the assignation, upon this ground, that it was proved to have been a blank sheet of paper, with the subscription of Margaret Cruickshanks and witnesses, only filled up after the decease of the granter, and there was no evidence or document of a communing to warrant the filling up of the same. Here one of the witnesses having deponed, that he filled up the blank after Margaret Cruickshanks's death, and the other deponed that it was blank at subscribing; it was presumed to have continued blank till her death. The Lords thought, that though before the late Act of Parliament about blank writs, writs might have been blank in the substantial parts, where there were schedules, or something to direct how to fill them up; yet the making a writ entirely blank, without any circumstance

to clear the intention of parties; in which the haver may fill up, not only dispositions or assignations to all the granter had, but even treasonable declarations, or what else he thinks fit,—is of dangerous consequence.

MS. page 1.

1713. *Nov.* 25. PATRICK M'DOWAL of Freugh *against* M'GHIE of Balmaghie.

JOHN M'GHIE having pursued Patrick M'Dowal, for proving the tenor of a bond granted by Sir Alexander M'Culloch of Myreton, as principal; Godfrey M'Culloch, his son, James M'Culloch of Mool, and the deceased Patrick M'Dowal of Freugh, the defender's father, as cautioners; to the deceased Alexander M'Ghie of Balmaghie, the pursuer's grandfather, for the sum of 1800 merks: in the year 1670, the principal bond being produced out of the register of Kirkcudbright, where it had been recorded in the year 1684, in a very lame condition; carrying the subscription of Freugh, the cautioner, but only the initial letters of Alexander M'Culloch the principal debtor's name, the rest of it being worn away: The Lords found, that a fair extract of the said bond, with other adminicles produced, made it presumed, that the bond was whole and entire at the time of the registration; the defender having owned the bond to have been a true deed, but alleged only that it was cancelled when put in the register. The adminicles assigned to abstruct the verity of its never being cancelled, were these, 1. Any defect in the bond seemed to proceed rather from ill keeping than out of any design to cancel or discharge it: and the registers of the court had been unduly kept. 2. Sir Godfrey M'Culloch, as principal, after his father, Sir Alexander's death, and Murray of Burghtoun, as cautioner, did, 29th October, 1679, corroborate the bond, and in December, 1681, the former granted a bond of relief to Mool, one of the cautioners in the original bond. For payment of the debt in controversy, diligence by horning and denunciation was used in the year 1684, inhibition in the year 1685, and adjudication in the year 1687; and one of the cautioners had promised payment, a matter of fourteen days only before the registration. The Lords considered that an extract out of a lawful register, makes faith in all cases except in *causa falsi*: because of the presumed fidelity of the keeper of a public office, who, till the contrary be proved, is not to be supposed to have recorded a cancelled writ, though he is not obliged to know whether a writ, apparently formal, be true or false.

MS. page 5.

1713. *Nov.* 26. Executors of HUGH BLAIR, late Dean of Guild of Edinburgh, *against* Colonel FRANCIS CHARTERS.

IN a process, at the instance of the executors of Dean of Guild Blair, who was donator of Thomas Row's escheat, against Colonel Charters, for payment of L783 Scots, contained in a bond, and L.400, contained in a subscribed account for clothes furnished by Thomas Row to the defender, a decreet having been pronounced: