1770. *August* 2. DAVID GLEN *against* THOMAS YOUNG.

WRIT.

The deposition of an instrumentary witness, who deponed *non memini* as to his knowing the granter, and having seen her subscribe, not sufficient, in terms of the statute 1681, c. 5. to void the deed.

[*Faculty Collection, V.* 109; *Dictionary,* 16,905.]

COALSTON. There is a difficulty from the terms of the Act of Parliament. If witnesses to a recent deed were positive as to this fact, That they did not see the party subscribe,—the deed would be null: but, after some years, it would be dangerous to interpret the Act so strictly. The law requires knowledge—nevertheless in practice the witnesses do not know the party.

MONBODDO. The law is express: decisions on the law are strong: How can we depart from the law and the decisions?

HAILES. This is too strict: the one witness remembers every thing,—the other does not remember—but he says nothing which leads to the belief that he did not see the party subscribe. When he says that he does not know the party—he explains himself so as to show that, by knowledge, he meant personal acquaintance.

AUCHINLECK. Were there a recent challenge, the strict words of the statute might have some efficacy; but here the challenge is after several years.

PITFOUR. To yield to this objection would be to accuse our nature, which cannot long retain the memory of uninteresting facts.

On the 2d August 1770, the Lords assoilyied; adhering to Lord Auchinleck's interlocutor.

Act. A. Crosbie. *Alt.* J. M'Claurin.

1770. *August* 3. DAVID OGILVIE *against* ROBERT GRUAR.

TACK—SERVICES PERSONAL.

A Tenant found not liable for certain perquisites or fees to the ground-officer of the Barony, they not being mentioned in the Tack; although it appeared that, by the immemorial usage of the Barony, the Tenants had been in use to pay such fees.

A FARM on the estate of Dunsinnan being let by public roup, the defender, as the highest bidder, became tenant thereof. By the written tack entered into