No. 176.

As the chief instruction that can be got from this decision concerns the vitiation of writs in appearance legally completed, I take this opportunity to illustrate a doctrine of some importance. It is laid down in the Doctor's reasoning, that in a civil court the vitiation of a writ cannot produce any further effect than to deprive the wrong doer of the benefit he proposed to himself by the vitiation. The proposition, for the reasons assigned by the Doctor, appears to hold true universally at common law. And it also holds true in equity, where, as in the present case, a right, once fairly established, cannot be taken out of the way otherwise than by a reduction. For it is not in the power of a Court of equity, more than of a civil Court of common law, to forfeit a man of his right because of any transgression. But in a matter of obligation, which requires to be made effectual by a process, a Court of equity can and ought to extend its power further. Thus, a bond which was made the foundation of a process for payment, being found vitiated in the sum by superinduction of pounds for merks, was refused to be sustained even for the original sum. 26th November 1723, M'Dowal of Garthland *contra* Kennedy of Glenour, Sect. 12. *h. t.* For a Court of equity may justly refuse its interposition for making a bond effectual to a pursuer who has falsified the same, leaving it upon the debtor's conscience to pay what is justly due. And the like decision was given 10th of February 1636, Edmonston *contra* Syme, Sect. 12. *h. t.* with respect to a bond antedated in order to save from inhibition; for the Court denied action upon this bond.

Sel. Dec. No. 163. *p.* 223.

1760. *November* 19. SHEPHERD *against* INNES.

No. 177.

In a reduction of bills granted for an apprentice fee, the objection that the original indenture had never been stamped, was repelled.

Fac. Coll.

*** This case is No. 8. p. 589. *voce* APPRENTICE.

1774. *August* 3. THOMAS LAIDLAW *against* MUNGO PARK.

No. 178.
Whether the superinduction in a bill, of a less sum than what the original still legibly was, vitiates the

Park being sued, as representing the deceased John Park, for payment of a bill which John had accepted for £50 Sterling, payable to Laidlaw, pleaded, That the bill was not actionable, as being vitiated *in substantialibus*.

It was admitted, that the sum of the bill, as originally drawn by the pursuer, was £60, and in that shape having been sent to John Park, by the pursuer's wife, to get it accepted, the account given of the superinduction that now appears in it

No. 178. bill, the alteration being made by the debtor himself, at the time of his accepting it?

was this: That, when the bill was presented to John Park, he did not refuse that he had agreed in terms thereof with the pursuer; but said, he only inclined to make the bill for the principal sum, for that he intended to pay up the interest, which amounted to £10, previous to the term of payment in the bill; and accordingly, with his own hand he changed the letters *s* and *x*, in the word *sixty*, into an *ff*, making the sum *fifty* instead of *sixty*, and then he accepted the bill, and sent it back to the pursuer; and that this alteration was demonstratively the operation of John Park himself, is undeniable, from comparing the letters altered with the bill itself, and subscription adhibited, as the alteration is done with the same mark and form of writing.

"The Lords, in respect of the special circumstances of this case, particularly that it is not denied, that the alteration of the sum in the bill was made by the acceptor himself, and that, from ocular inspection, it appears that the sum has been lessened from sixty to fifty, which is in favours of the acceptor, sustain the bill to the extent of the said fifty pounds Sterling claimed; repel the objection thereto; and remit to the Ordinary to proceed accordingly."

Act. *Armstrong.* Alt. *Currie.* Reporter, *Auchinleck.* Clerk, *Campbell.*

Fac. Coll. No. 127. *p.* 344.

No. 179.

1777. *August* 8. MATHISON *against* DUFF.

Found that if an obligation is in the form of a missive, stamping is not necessary. See APPENDIX.

Fol. Dic. v. 4. *p.* 412. *T. MS.*

No. 180.

1778. *February* 14. M'DONALD *against* ————.

Found, that an obligation to grant a lease must be stamped. See APPENDIX.

Fol. Dic. v. 4. *p.* 412. *T. MS.*

No. 181. A letter not holograph found obligatory, the subscription being acknowledged.

1779. *January* 19. DUNCAN CLARK *against* DAVID ROSS.

Walter Ross purchased in Scotland, and shipped for London, two cargoes of coals, upon commission, for Duncan Clark and George Ross, who carried on a coal trade in Company there. Before the arrival of the vessels at London, Ross and Clark had agreed to dissolve the Company; and Ross being desirous to have the property of both cargoes, Clark consented, on condition of his getting sufficient security, that he should not be liable for any part of the price.