

\*\* Dirleton reports the same case :

IN the case betwixt Mr Andrew Brian and George Grahame, the said George being constituted assignee to a bond granted by the said Brian to Thomas Jack, and having charged thereupon, the suspender offered to improve the bond, and urged the charger to abide by the same, which he was content to do in these terms, viz. That he did abide by the said bond as truly assigned and delivered to him by the cedent ; and that the cedent would compear and abide by the same as a true bond.—The suspender *answered*, That the cedent was *lapsus*, and had come out of prison upon a *bonorum* ; and therefore he ought to find caution to compear all the diets of the process.—THE LORDS found, That the cedent should abide by the said bond, with certification, that if he should not appear when the Lords should think fit, for clearing the question anent the falsehood of the bond by his oath or examination, the bond should be declared to be void, and to make no faith both as to cedent and assignee.

*Dirleton, No II. p. 6.*

No 175.

1668. *January 21.*

HOME *against* TELFER.

AN exception of improbation being proponed against a writ, and thereafter Telfer of Harycleugh being desired to abide at it, he declared that he had gotten it as a true evident, and condescended upon the way he had gotten it, and it being alleged that he ought to be positive, whether he would abide at it or not,

THE LORDS declared that after probation they would consider how far his using and abiding at the said writ should import against him, and if he be in *bona fide* to use the same.

*Fol. Dic. v. 1. p. 456. Dirleton, No 142. p. 58.*

No 176.

1672. *June 20.*

HENDERSON *against* HENDERSON.

IN an improbation betwixt Henderson and Henderson, the production being satisfied, and the writs produced, there was a term assigned to the defender to compear and abide by the same ; and the defender not compearing, and the term circumduced, it was proposed to the Lords what should be done thereupon, whether the writs should be improven *simpliciter* upon that evidence, that the user thereof would not bide by the same, so as to infer a forgery, or if further evidence behoved to be made use of.

THE LORDS found, That decret ought to follow thereupon, as upon the certification implied in the act for biding by, that they should make no faith in the same manner as in a certification for not production.

*Fol. Dic. v. 1. p. 457. Stair, v. 2. p. 85.*

No 177.

In an improbation, where a term was circumduced for not abiding by the writ, it was declared to make no faith, as if it had not been produced.