

No 110. *Answered* for the pursuer, Extraordinary cases must have extraordinary remedies; and yet the remedy proposed is most natural and rational here, where no writ is sought to be made up but what Mr Forrester's notes afford ground for, and nothing to be proved but that he writ these notes; *2do*, Though the retiring of a bond by the granter presumes liberation, that *præsumptio juris* is elided and taken off by the notes upon the retired paper, if proved to have been written by Mr Forrester himself.

THE LORDS granted diligence to cite witnesses for proving the notes to be Mr Forrester's hand-writ.

*Forbes, p. 110.*

1710. December 7. DAES *against* FULLERTON.

No 111. IN a reduction, upon the act 1621, of an assignation, which bore not only for love and favour, but for other causes and considerations, the assignee offered to prove the onerous causes; yet the LORDS sustained the reduction, because they would not allow the assignee to prove contrary to the terms of his own writ.

*Fol. Dic. v. 2. p. 223. Fountainball.*

\* \* \* This case is No 50. p. 921, *voce* BANKRUPT.

1711. June 21. SIR ALEXANDER BRAND *against* The TENANTS of Riccartoun.

No 112.

That a bill was blank in the receiver's name at the time of accepting, found relevant to be proved only by his oath or writ.

IN the suspension raised by the Tenants of Riccartoun of a charge upon their accepted bill of exchange, at the instance of Sir Alexander Brand, the LORDS having, No 21. p. 1679, found it relevant to annul the bill, that it was blank the time of accepting, and after it was out of the acceptor's hand; they now found, that the bills being so blank, behoved to be proved *scripto vel juramento* of Sir Alexander Brand; in respect no person's written evident can be taken away otherwise than by his own oath or writ; and it were easy to pretend on all occasions that the writ quarrelled was originally blank. So this rule, that writ should not be taken away by witnesses, is most necessary to be observed in bills, where no instrumentary witnesses use to be adhibited, and, consequently, extraneous witnesses behoved to be relied on. Albeit, it was *alleged* for the suspenders, That if it were not allowed to prove the bill's being blank by witnesses, the design of the act of Parliament would be frustrated, since it is not to be imagined that the receiver of a blank writ will declare under his hand that it was blank; and it is the act of Parliament in this case that annuls the writ; for the testimony of witnesses does but prove the nullity, which is fact.

*Fol. Dic. v. 2. p. 218. Forbes, p. 509.*