

the writs were so defaced that they were, in some places, scarce legible, and could never have been made up, had not the supreme authority of Parliament done it; and wherever a vitiated writ is produced *pessimum præsumitur* against the user. *Duplicated* for Pitcur, That he had the rules of law on his side; for *casum fortuitum nemo præstare tenetur; et ea interpretatio sumenda ut actus potius valeat quam pereat*, and l. 5. C. De fide instr. says, *iniquum est instrumentis vi ignis consumptis debitores quantitatum solutionem renuere*, and Pope Alexander III. capit. 3. extra de fide instrum. *si in narratione tantum abrasce sunt non inde vitiatur*. There was another circumstance urged against this bond, That Sir George, in the list of his debts owing by him, did not insert this bond, but mentioned Pitcur's bond in his list of debts owing to him; though it was said that men are not curious to propale bonds of this kind, to shun the disobliging of such friends as are omitted. THE LORDS, by a scrimp plurality, found this vitiated bond improbative and null; but there were three *non liquet*. If art or industry had any way appeared in the tearing this bond, all were clear it could prove nothing; but some had a conviction that it happened merely by chance and accident, without design. Yet the forecited law of the Emperor Gordian, l. 5. C. De fide instrum. says very well, "*non statim casum fortuitum conquerentibus facile credendum est*."

*Fountainhall, v. 2. p. 757.*

1729. February.

Duke of ROXBURGH *against* RUTHERFORD.

No 226.

It was found to be a nullity in an apprising, that the third sheet appeared, from ocular inspection, to have been made up and put in since the allowing of the apprising, though the apprising was offered to be supported by production of the letters and executions to which it was conform; which was not found relevant, it being sufficient to say, that *non constat* this was the apprising signed by the messenger; that the presumption was otherwise from the vitiation; and that therefore the writing can bear no faith. (*See APPENDIX.*)

*Fol. Dic. v. 2. p. 153.*

1753. January 9.

COUTTS and COMPANY *against* ALLAN and COMPANY.

No 227.

The literal terms of an obligation corrected from the circumstances of the case. The crop of one year had been inserted when it was evident another was meant.]

ON the 14th September 1754, Fairy, agent for Coutts and Company, wrote to Allan and Company, "Gentlemen, I acknowledge to have sold from 600 to 800 bolls of north-country meal, crop 1754, good and sufficient oat-meal, at 10s. 8d. Sterl. per boll, deliverable at the harbour of Irvine, as soon as wind and weather will allow; payable at Martinmas next, and the 1st January, in equal proportions."