

No 42. would render the act of Parliament useless; but only that upon the construction of the act the heir is obliged to depone; and if he should acknowledge he saw his father subscribe, or the like, it would be the same as if the subscriber had, while in life, acknowledged his own subscription.

Fol. Dic. v. 4. p. 155. Kilkerran. C. Home.

* * * This case is No 26. p. 9417. *voce* OATH OF PARTY.

No 43.

1747. December 15. THOMSON *against* MAGISTRATES OF DUNFERMLINE.

A MINISTER pursued the Magistrates of a burgh for manse-mail, allocated to him by a decree of the Commissioners 1683. *Objected*, That the Minister produced only a copy of a pretended decree, with some receipts more than forty years old.—THE LORDS found, that a horning, of date 1685, upon the decree, was a sufficient title.

Fol. Dic. v. 4. p. 156. D. Falconer.

* * * This case is No 445. p. 11275. *voce* PRESCRIPTION.

1752. June 4. CAMPBELL *against* M'LAUHLAN.

This day the following case occurred in the Ordinary action roll.

No 44.
Whether, or in what case, a party's subscription to a missive letter, not holograph, can be proved by witnesses? And whether a cautionary obligation can be proved by witnesses?

LEITH, tacksman from Campbell of the lands of _____ being to remove at Whitsunday 1751, and being in arrear of his rent, as also debtor to his master in the price of a certain quantity of bear, which he had bought from him off other farms, M'Lauchlan, who had let a farm to Leith, to which he was to go on his removal, was said to have written a letter to Campbell to the following effect: 'That understanding Leith, who was to remove, was debtor to him in an arrear of rent, as also for his farm-bear, as Leith was coming to a room of his, and could not presently pay, he desired he would let him bring away his effects, and he, M'Lauchlan, should be forthcoming for what Leith should grant bill for to him, upon stating their accounts.'

So it happened, that no account being stated between Campbell and Leith, Campbell pursued him for payment of what he owed before the Sheriff-depute of Argyle, and obtained decree for L. 25 Sterling, whereof Leith procured a suspension; and Campbell having, at the same time, pursued M'Lauchlan on his letter, and the process being conjoined with the suspension, M'Lauchlan's defence was, that the letter was improbable, not being holograph, acknowledging, at the same time, that he had subscribed a letter to Campbell, of the hand-writing of _____ schoolmaster at _____ in which