

SWINTON. Any man acquainted with Lumquhat's handwriting might have said all that his heir has said, and yet *that* would have been no evidence.

JUSTICE-CLERK. The heir swears that he has *no doubt* of the subscription being his father's. It would be going far to hold that this is no more than an oath of credulity.

MONBODDO of the same opinion.

GARDENSTON. The Act of Parliament requires proof of the verity of the writing; and can we have a better proof than this oath? Shall we not believe what the party himself believes?

On the 28th November 1785, "The Lords found that the oath does sufficiently prove the verity of the missive-letter founded on, and therefore found the defender, Lord Lindores, liable for payment of the one-half of the principal sum, and interest libelled;" altering the interlocutor of Lord Ankeruille.

On the 14th December 1785, they refused a reclaiming petition and adhered.

Act. W. Nairne. *Alt.* Ed. M'Cormick, J. M'Laurin.

Diss. Eskgrove, Swinton, Henderland, Rockville, Braxfield, (Ankeruille, Ordinary, absent.)

1785. December 9. ROBERT WALKER *against* ROBERT DUNCAN.

WRIT.

Acknowledgment of Subscription.

[*Fac. Coll. IX. 428; Dict. 17,057; Note.*]

HAILES. All the argument on the fact, from the suspicions raised against the subscription, "*Robert Duncan*," is nothing to the purpose; for *that* subscription is still connected with the rest of the paper. [A circumstance never attended to by the lawyers in this cause.] And, supposing it to have been separated from the paper, the tops of the original letters are still visible on the paper; and the art of man could not have pasted any subscription so as to correspond with those tops. As to the cause itself, there is a difference between a deed *inter mercatores* and a deed *in re mercatoria*. When merchants engage in transactions, not necessarily connected with commerce, they must observe the same forms that the law requires in solemn deeds.

ESKGROVE. In various cases, which do not necessarily require writing, acknowledgment of subscription may be sufficient; but the case is different where a formal writing is necessary to constitute the obligation. An obligation of relief is a cautionary obligation for producing action.

MONBODDO. If a person acknowledge his subscription, there is no danger of forgery: so the Act 1681 is out of the question. Late decisions may be against me, and perhaps my law may be antiquated.

HAILES. Let me add, that Lord Coalston thought as Lord Monboddo does; but, after the case of *Fogo* and *Milligan*, which was deliberately judged, he gave up his opinion to that of the majority, that there might be no longer any controversy on this point. It is now settled, if any thing can be settled.

PRESIDENT. The Act 1681 is not merely intended to prevent forgery: it introduces a solemn form of a *literarum obligatio*.

On the 9th December 1785, "The Lords assoilyed;" altering the interlocutor of Lord Anker ville.

Act. E. M'Cormick. *Alt.* A. Abercrombie.

Diss. Anker ville, Monboddo; *non liquet*, Rockville.

1785. December 9. ABRAHAM LESLY against ALICIA MACKENZIE.

JURISDICTION.

Criminal acts subject to the cognizance of criminal courts, *ad civilem effectum*.

[*Fac. Coll. IX. 374; Dict. 7422.*]

BRAXFIELD. Suppose that Lord Advocate should pursue *ob vindictam publicam*, and that the party should obtain the verdict of a jury in his favour, this will not be a bar to an action *rei persecutoria*. Besides, the private party, in support of his claims, might discover more evidence than was laid before the jury. The private party cannot be obliged to stop till the prosecution shall be carried on by Lord Advocate. It is also a maxim in law, that "no man, with whom I have no concern, can hurt me." The civil law will not apply; because, *in crimine publico, quilibet ex populo* might pursue. Now the very reverse is the rule of our law. A cow, value five pounds, is taken from me. May I not pursue to recover the cow, or its value, in the civil court? or must I, first of all, lay out a hundred pounds in the criminal court, to pave the way for my recovering five pounds on the cow in a civil court? Every day, actions for recovering penalties on account of bribery are brought; but was it ever heard that a criminal process for punishing the bribery must be first brought? In the late case of *Lady Erskine*, though strenuously litigated, it was never pleaded that an accusation for bigamy ought to have been brought and determined before the civil action would be heard.