

is led, are paid, ought not to stop the course of the diligence, unless it be instantly verified, although it be an adjudication in the new form, reserving all the defences to the action for maills and duties. *Vide supra, 2d December 1675, Kello and Nasmith, No. 453, § 3.*

Referring to oath, if the pursuer be in town, will be reputed an instant verification. *Advocates' MS. No. 700, folio 314.*

1678. *January.* JAMES DEANS *against* SIR ADAM BLAIR.

JAMES Deans, bailie in the Canongate, charges Sir Adam Blair of Carberry for £900 contained in his bond. Sir Adam craves compensation for some coals furnished by him to the charger, and refers it to his oath. He not being clear on the quantity, defers it back to Sir Adam. He scruples likewise. Craigie, Justice-Clerk, ordains the coal-grievous and inlayers of the coals to be examined anent the quantities.

Against this, ALLEGED,—They could not take away a liquid written bond. REPLIED,—James Deans his oath had loosed and taken it away this far,—That he had declared he had gotten some coals in part of payment. The Lords sustained the quantities inlaid to be proven by the witnesses foresaid.

But the term being circumduced against them, for not compearing to depone, James Deans, charger, declared he was now clear, after trial, to depone on the number of the loads furnished.

Then Sir A. Blair obtained a declaration from the Lords of the Treasury, that since this bond was contracted on that account, therefore recommended to the Lords to supersede any execution on it till Sir Adam had closed his accounts in Exchequer.

Against this it was OBJECTED,—That it was *rescriptum subrepticium et obrepticium, celata veritate et expresso, mendacio, contra jus et utilitatem publicam*; and therefore the Emperors themselves command it *ab omnibus suis iudicibus refutari*. And our Acts of Parliament condemn all privy writings, contrary to the furtherance of justice. Act 47, Parliament 1587, and the laws there cited from the Codex.

This process sisted by James Deans his death.

*Advocates' MS. No. 701, folio 314.*

1678. *January 1.* GEORGE GRAHAME, MALLOCH, *and* WEDDALE.

UPON a report *in presentia*, in a case of George Grahame, Malloch, and Weddale, John Frazer was simply repelled from bearing witness in any cause, because of this objection,—That he was convicted of bigamy, and so, by Act of Parliament, is infamous, though he had a remission therefore: but here there was no *penuria testium*.

It seems strange, in our law, that adultery shall be death, and bigamy only punished with an inferior arbitrary pain. *Infra, [28th May 1678, Historical Volume,] Bruchton's case.* *Advocates' MS. No. 702, folio 314.*