

thought it of dangerous consequence to admit such qualified abidings at writs quarrelled for falsehood; for they would never fail either to name a dead man, or one out of the kingdom, if that were sufficient to liberate them from the hazard of punishment; and, on the other hand, some thought his case equivalent to an assignee's, whom it were hard to tie simply to abide at the verity of the paper, if he could not produce his cedit. THE LORDS gave him some time to deliberate, but put him under caution of 5000 merks to present himself at the said diet, otherwise to go to prison till it were tried.

No 195.

Where one refuses to abide at a writ quarrelled, all that can be done is to declare it false by presumptive falsehood for not abiding by it; but when the user has once abidden by it judicially, he ought not to be allowed to resile, or adject qualities thereto; and, in that case, if the articles inferring the falsehood be found proved, then not only the writ is declared false, but the user remitted to be criminally punished according to the quality of his guilt. See Durie, 5th February 1635, Ker, No 173. p. 6750.

1695. November 19.—The cause mentioned *supra*, 15th current, of Young against Hays being called, and the pursuer, after deliberating, refusing to abide simply by the writ quarrelled, the LORDS found it improbate, and did improve it, without descending to advise the testimonies, in regard of his not abiding by the same; but, least he should afterwards be pursued as user of such a writ, the LORDS adjected, by a special vote, this quality, that they found no ground to pursue him for his using before the Criminal Court, and therefore refused to remit him to the same. THE LORDS did not resolve to make this a constant rule; but, in regard of his apparent innocence, they adjected this *salvo* to secure him. See an instance of a qualified remit to the Justice Court, in Durie, 14th July 1638, Dunbar, *voce* JURISDICTION. See also Stair, 24th July 1661, Lamberton, No 174. p. 6753.

*Fol. Dic. v. 1. p. 457. Fountainball, v. 1. p. 518. & 678.*

1694. November 30.

WALLACE *against* The VISCOUNT of KINGSTON, and His TENANTS.

No 196.

It came to be debated, how far he was bound to abide at the verity of the intimation made to the tenants, which was offered to be improved as false, and which he was content to abide at as truly delivered to him by Mr Robert Swinton the notary, who was content to enact himself to abide by it *simpliciter*; in regard the Lords had varied in this, sometimes allowing a qualified abiding to heirs who found it in their predecessor's charter chest, and to assignees, that it was really so delivered to them by the cedit; at other times obliging them to abide at it without any quality, in regard of the danger of the preparative, that one, to shun the hazard, will assign it to a person of no fame nor substance; therefore they took here a middle course, seeing the notary abode at it *simpliciter*, (as messengers do at executions) and superseded to declare how far he

No 196. should be liable for using it till the probation were taken, that it may appear how far he was accessory thereto. See the like in *Durie*, 5th February 1635, *Ker*, No 173. p. 6750. ; and *Stair*, lib. 4. tit. 20. § 19. Some thought it securer to oblige all to abide simply, but to allow them to protest to be heard at the advising, why they could not be liable.

*Fountainball*, v. 1. p. 646.

1697. *January 27.* Mr JAMES STUART *against* The LAIRD of LAMONT.

No 197.  
An execution of a summons being challenged as being forged, the defender offered to abide by *qualificate*, that it was as received from the messenger. Obligated to abide by simply, but he might protest.

MR JAMES STUART advocate pursuing the Laird of Lamont for a debt, the defender offers to improve the executions of the summons, and craves the pursuer may abide at the verity of the same ; he offers to do it *qualificate*, that he truly received it so from the messenger. *Answered*, If this were allowed, it would open a manifest door to all forgeries, for the user would always escape. *Replied*, In writs signed by parties, this is not to be allowed ; but where it is done by a third party, it is hard that one should answer for a messenger's knavery whom he employed, seeing they find caution for their fidelity, and are liable ; and in *Wallace against The Viscount of Kingston*, *supra*, the LORDS found a party, producer of a notar's instrument, no farther obliged, but to abide at it as truly delivered to him. THE LORDS ordained him to abide at it simply ; but allowed him to protest that he should be no farther liable, unless his accession were proved ; and the LORDS at advising would consider how far his protestation should liberate him of the hazard of falsehood, as an user.

*Fol. Dic. v. 1. p. 456.* *Fountainball*, v. 1. p. 760.

1700. *January 24.* CHARLES FLEEMING *against* MARGARET NISBET.

No 198.  
A disposition to a party's parent being challenged, the party offered to abide by *qualificate*, because granted before she was born. Obligated to abide by simply.

IN the improbation pursued by Charles Fleeming of Dalquharn, against Margaret Nisbet and John Veitch her husband, of a disposition granted to her father by Mary Sinclair, relict of Captain Ross in England, it was *contended* for her, That she ought not to be obliged to abide at the said writ simply, it being granted before she was born, and made use of by her father in his lifetime, and not then quarrelled as false ; and that in July 1661, betwixt Lamberton and the Earl of Leven, No 174. p. 6753. ; and in January 1666, *Graham contra Brian*, No 175. p. 6754 ; the LORDS permitted them to abide at them only *qualificate*, that they found them among the predecessor's papers, or being assignees, that they were truly delivered to them as real honest writs. But the LORDS considered, that the decisions since that time have expressly required that they should simply abide at the deed, otherwise falsities might easily escape punishment, by assigning the mover to another, and the act of Parliament 1621, cap. 22. speaks of users as well as forgers ; only the LORDS are in use to allow them to protest for what qualities they please, and to adduce what instructions they can, either to exculpate and alleviate, or to take off their