

No 203. bertson, No 188. p. 6763; Jan. 3. 1666, Jack against Bryan, No 175. p. 6754, which is the meaning of the citation out of my Lord Stair's Institutions. For, *qui falsum recitaverit tenetur in crimen falsi subscribere, Tit. D. ad L. Cornel. De Fals.* And where the user of a false writ abides by the same after it is quarrelled, *dolus malus* is presumed *ex re ipsa*. This is confirmed from the practise aforesaid, betwixt Ker and Forsyth, February 5th 1635, No 173. p. 6750, and that betwixt Lamerton and the Earl of Leven, July 24th, 1661, as observed by President Gilmour, No 174. p. 6753.

*Fol. Dic. v. 1. p. 455. Forbes, p. 715.*

1739. January 31.

RUSSELL against ADIE.

No 204.

THOUGH the form of abiding by is, that it be simply, yet it is never refused to allow the party, by way of protest, to add any quality he pleases, which should be given in in writing; but where there are two defenders, if one abide by simply, the other may abide by *qualificate*; e. g. that he got the deed from the person who has abidden by. Thus, where a messenger's execution was challenged on falsehood, the messenger abiding by simply, the user was allowed to abide by *qualificate*, that he got it from the messenger; but *one* must always abide by simply.

*Fol. Dic. v. 3. p. 313. Kilkerran, (IMPROBATION.) No 1. p. 280.*

1743. July 5. & November 23.

HAMILTON & BAIRD against HUNTER.

No 205.

*Exceptio falsi omnium ultima*, how to be understood.

HAMILTON and Baird, executors confirmed to Hamilton of Newton, charged William Hunter, writer in Edinburgh, upon a bond of 8000 merks, due by him to the defunct, which he suspended: And, at discussing, the cautioner in the suspension *objected*, That he could not be liable, in respect his bond of cautionry did not refer to the bond charged on, which the Ordinary repelled; and the LORDS, after proof taken, "Adhered," as is to be seen, *Tit. Falsa Demonstratio*, July 5th, 1743, *inter eosdem*, No 4. p. 4155.

A petition against this interlocutor of the Ordinary being appointed to be seen; before the answers were given in, the cautioner proponed improbation of the execution of the edict, which was so far proceeded in, that consignation was made of the L. 40, the officer had abidden by, and articles of improbation were exhibited; and when, after all this, the answers came in to the cautioner's petition, a preliminary point was therein pleaded to the competency of the objection to the bond of cautionry, after improbation of the edict had been proponed before the Ordinary.