Sutor to hear and see the said places verified by the notary and witnesses inserted in the said contract. It was *alleged* on the contrary, That no witness ought to be received thereupon; because, the said contract contained in it infeftments and reversions of lands, which ought not to be proved by witnesses; and the matter appeared to be very dangerous to admit probation, which required solemn and authentic writ to be proved by witnesses. THE LORDS, for the most part, pronounced by interlocutor, that they would not receive the notary and witnesses to verify the clauses that were contained in the margin, and so would neither register nor admit to probation the notary and witnesses inserted in the clauses contained in the margin. No 17.

Fol. Dic. v. 2. p. 214. Colvil, MS. p. 281.

1610. *November* 23. MELVILL *against* MURRAY.

A MAN pursuing the maker of a bond to him, to deliver the bond as his evident, because it being subscribed and delivered to him, he gave it back again to the maker to get it subscribed by cautioners, and offering to prove the summons by four Lords of the Session, being *testes omni exceptione majores*;—the LORDS inclined to admit that probation, albeit the defender contended, that no probation could be received, but writ or oath of party. No 18.

Fol. Dic. v. 2. p. 216. Haddington, MS. No 2007.

1611. *November* 28. HOWIESON *against* HOWIESON.

IN an action betwixt Howieson and Howieson, the LORDS fand, that a reposition made by the mother to her own son, being all written with her own hand, and wanting witnesses, could not prove against a third party, who had acquired the mother's right. No 19.

The like betwixt the Lo. Forbes and Marquis of Huntly.

Kerse, MS. fol. 260.

1626. *March* 29. KEITH *against* ROBERTSON.

IN an action betwixt Keith and Robertson, an assignation being made by one who was bankrupt to his creditor pursuer, which being intimated to the defender, who was convened for the debt, and the defender offering to improve the same, as false in that date whereof it was when it was produced; and the pursuer *answering*, That that imporbation of the date ought not to be admitted to

No 20.
An assignation of a false debt found null *in toto*, and no proof of the time of intimation allowed.

No 20.

be of that force and consequence to make the whole assignation to fall, seeing the date was not essential, neither was the defender prejudged by the date, the same being of any date before it was intimated; likeas, he was content to abide at the same, as truly done and perfected before the said intimation, which ought to be enough, if he use the same of any date preceding the intimation, seeing the defender had no prejudice, if it be of a date anterior to the intimation, as said is; the Lords found this allegeance of improbation in the date to be relevant, notwithstanding of the answer, and notwithstanding that the pursuer *alleged*, That he might fill up any date therein as he pleased, before the intimation; which the Lords found could not be changed, being once used and produced of a filled up date by the pursuer in judgment, and being intimated; and so found, that if the defender improved the same in the date, albeit the defender had no prejudice by the said date, yet that it was sufficient to make the whole assignation to fall, seeing of the law, what is found not to be truly done of that date, as it bears and as it is used, must be presumed not to be done at all.

Act. *Burnet* major. Alt. *Burnet* minor. Clerk, *Gibson*.

Nam quando non est orta quæstio inter partes, notarius emendare potest ea quæ sunt sui officii per se, ut dies, nomina testium; sed si orta sit quæstio, non potest, nisi parte adversa ad hoc citata; ubi autem redarguitur instrumentum falsi, tum post intentionem litis, nec per se, nec per judicem, nec in iis quæ sunt sui officii, nec in aliis corrigere potest. Lanfr. de Fid. Instr.

Fol. Dic. v. 2. p. 214. Durie, p. 199.

*** Kerse reports this case:

In improbations *in data*, the Lords will give the party user place to abide by the writ of the other date *in die, sed non in mense*.

Kerse, MS. fol. 207.

1626. *July* 27. M'Culloch *against* M'Culloch.

No 21.

A brief whereupon a service was deduced found null, because it was blotted and vitiated in the date of execution, and the pursuer was not allowed to mend the same and abide by it, as is usual in other executions, in respect of the act 113th, Parl. 1429; which act was found to extend to the date of the execution, as well as to the date of the brief.

Fol. Dic. v. 2. p. 214. Durie.

*** This case is No 11. p. 6856. *voce* Inducia Legalis.