

times allowed to abide by writs with this quality, that  
 were not the first possessors of them, but had themselves  
 assignation or mesne purchase, and in such case they must abide  
 by the Verity of the assignation, or prove that the writs  
 assigned were in their predecessors hands at their death  
 Stat. Lib. 4 Tit. 20 § 19. But I don't find that this quality  
 abiding by was ever allowed even to an heir or assignee  
 unless the feoffor or some other party concerned offered  
 to abide by simply & Feb. 1635 Ker contra Forgyth  
 July 1661 Le James town contra Ederman offered by Gilb  
 & Hair 3 January 1666 Graham & Leach contra Brien  
 November 1678 Paterson contra McLeisic offered by De  
 = onne because such qualities are contrary to the Act of  
 Parliament declaring usurers off false writs and abiding  
 by them necessary to forgery: and it is not proper for  
 the Lords of Session to try the consequence of an  
 abiding by false writs, which is Criminal to allow  
 for. Besides it being no more difficult to forge a  
 writ as granted to another, and assigned by him to  
 forge himself, as to forge a writ granted immediately  
 to the forger, it would be a dangerous consequence  
 to justify the user to abide by it, qualitate upon  
 own objection only. Thus the user of a writ in ques-  
 tion was not allowed to abide by the rents clerical in the  
 books, that he received it from his tutor or parent  
 14 July 1680 Gray contra Robertson. So that he could  
 not argue in a process among his fathers writs, tho he was  
 an infant at the date thereof 20 July 1713 Blair contra  
 Donald. Wherein a purveyor in an assignation commenced in  
 assignees name that assignation was questioned as false, the  
 assignee's word that his name being filed, was therein but the  
 his knowledge he was not concerned to abide by the same, and  
 another having a commission from the feoffor who was sworn  
 in Barbadoes to prosecute the action, offered to abide by the  
 assignation only as a factor, some of the Lords thought that  
 abiding by with such a quality might not to be received; but  
 the favour of persons abiding simply by writs questioned as  
 false, is the great bulwark and security of people against  
 the fraud which daily increases. But this point was decided  
 = onne. Where a Discharge granted by a Minister of part of  
 his stipend to one of his Clergymen was questioned as false,  
 the Rector was not allowed to abide by it with this quality  
 that

that payment not being made by himself but by his tenant, he did  
 abide by it as a writ truly delivered to him by the tenant: which  
 the Rector would produce the tenant to abide by it as a writ truly  
 = by subscribed by the Minister. Discharge Dec. 29. 1741. Decided  
 to now allow persons to plead at their bidding by, upon any  
 quality they should put upon clearing them of objection to the  
 forgery if proved, in which case after the forgery is made known,  
 the Lord before remitting the cause to the Court of Session,  
 allow the prosector to produce now to come forward by the  
 false writ 14 July 1680 Gray contra Robertson offered by De  
 = onne contra E. Wrens 24 Dec. 1679 Hamilton contra Currie.

There are two ways of improving a writ, viz. the Trial,  
 and Judicial manner.

The Trial manner of Improving a writ is by the testimony  
 of the Testes and Instrumental Witnesses. It is not improved  
 in the Trial manner when the witnesses deny the contents of  
 such an Evidence, and the witness deny that they were parties  
 to the party's subscription, or the witness deny the fact  
 = word that was improved, because of the Instrumental but  
 = respect to writing, that they themselves do deny, or their having  
 been attracted to such a deed. Strickland 9 Feb. 20 1720. Where  
 one of two Witnesses did see his writing, and the other  
 witness did the writ with another, it is not improved  
 as false or forged 20 Feb. 1723. The case of King contra  
 = Munnie & Leach Dec. 14. 1723. In a case of King contra  
 a writ was found better for the party who one of the two  
 witnesses in it denied his subscription, and the other witness  
 affirmed his; being the testimony of the denying witness  
 = retracted of his hood by writ and decree, and his subscrip-  
 = tion admitted by the other. In question of Subscrip-  
 = tion the writ was admitted by the Testes and evidence of it  
 who, altho they said it did not belong to, and was drawn from the  
 Grantor to draw it 9 Feb. 1725. Henderson contra Stewart.  
 = Besides, if an Instrumental Witness simply denying of his  
 subscription to a writ, should answer it without all remedy,  
 a fair way would be opened for annulling securities of the Pla-  
 = = tions for their being common by No Justice taken. The quality  
 = of subscribing witnesses, the Making use of whom Excludes  
 all objections against their Validity, they may deny their sub-  
 = scriptions thro want of Memory, or the Alteration of their  
 = hand writing, or thro Corruption or partiality. If two or more  
 = witnesses are dead, they are presumed to prove in opposition  
 = to as many witnesses denying their subscriptions, tho they  
 = have died, tho for George McLeisic Crime part. 17. 27. 80 will  
 = = be proved by living witnesses, and that if two of five  
 = Instrumental witnesses should improve, where the other  
 = three