

No 564. direct and indirect manner, and for improbation or approbation of the bonds in question, and having taken Kettlestoun's-oath, when he did abide by the verity of the bond indirectly, that he could not condescend any otherwise upon the writer of the bond than as he was designed, and did not know the particular person who did write the same; and having found by the depositions, that there were at least six John Carnagies who had served the Earl of Southesk, whereof some were dead, and no hand writs of theirs were produced, that, *comparatione literarum*, John Carnagy, the writer of the bond, his hand writing and subscription might be improved, and that Kettlestoun himself, judicially upon oath, had abidden by the bond as a true bond, delivered by his father; as likewise, upon deathbed, a little before the advising of the cause, that, in presence of the minister and his friends, he had attested God that that bond was a true bond, and that he was never guilty of wronging any person in his lifetime; and that he had been always a person of entire reputation, albeit an ill manager of his estate and fortune;

They did assoilzie from the improbation.

*Gosford, MS. No 546. p. 291.*

1672. June 5.

ANDERSON *against* JOHNSTON.

No 565.

Improbation of a bond sustained by inspection of the writing, and no witnesses answering the designation of those inserted in it being found, the bond having been kept up for twenty years.

WILLIAM ANDERSON having pursued an improbation of a bond alleged granted by him to George Johnston, and failing of him by decease to Agnes Johnston his daughter, the pursuer *insisted* in the indirect manner; whereupon the LORDS, having advised the improbation, found that the bond bearing date *in anno* 1649, and nothing done thereupon, till of late after Mr George Johnston the pretended creditor's death, and that by ocular inspection, the body of the bond, the pursuer's pretended subscription, and one of the witnesses, were the same hand-writ; and that by several testimonies and testificates, it did appear, that there could be no such persons, as the writer and witnesses in the bond, found to have been existent, or to have been servants then to the persons to whom they are designed to be servants;

THE LORDS thereupon declared the bond to make no faith; but if the defender would astruct the bond, by proving the cause thereof, which was expressed to be a debt due after count and reckoning or would instruct that there were such witnesses as are here designed, who could write, the LORDS would receive the same, albeit the same was not proponed, or admitted the time of litescontestation: But the LORDS did not refer the matter to the Justices, not having found who was the forger, and the bond being pretended to be granted to the pursuer's father, who had a probablè ground of ignorance for making use of the same.

*Fol. Dic. v. 2. p. 266. Stair, v. 2. p. 83.*