

to the Earl of Southesk, another witness insert. The pursuer thereupon craved the defender would more particularly design the other witness John Carnagie, servitor to the Earl of Southesk, because there were several persons servants, or attendants, upon the Earl at that time of the same name, and condescends upon two of them having several designations, beside this common one. The defender alleged that he was obliged to condescend no further, seeing the act of Parliament required no more than the name, surname and designation. It was answered, that the intent of designations being to find out the person of the witness, that he might be adduced in the improbation, a general designation would not suffice, but behoved to be made special, or otherwise, if the pursuer should cite any person of that designation, and that person should deny the subscription, his testimony would improve, or at the best, the defender behoved then to design specially another of the same common designation, otherwise it were a compendious way to all forgery, as if witnesses should be insert of such a name, indwellers in Edinburgh, or any other town; in that case, if the testimony of none of them should improve, there were no remedy for the falsehood.

The Lords found that all the persons that were the Earl of Southesk's servants or attendants at that time, and were called John Carnagy, that were alive, should be cited, and the hand writs of any that were so designed, that were dead, should be produced by either party to be compared with this subscription, that thereby it might appear if the subscription could be astructed by the testimony or hand writing of any other.

Stair, v. 1. p. 730.

1671. December 5.

DICKSON *against* DICKSON

No. 111.

A ticket from one brother to another, bearing "That he should bear the half of the expense of repairing a certain house," found null, as wanting witnesses, and not being holograph.

Stair.

* * This case is No. 167. p. 11490. *voce* PRESUMPTION.

1675. January 23.

VANS *against* MALLOCH.

No. 112.

Umquhile David Trench stationer, having granted a bond to Helen Sim for 4000 merks, she assigns the same to Mr. John Vans her oye, who thereupon pursued Malloch as executor to Trench, who alleged absolvitor, because the bond is null, as having but one witness, and not being holograph. It was answered, that albeit the whole words were not written with Trench's hand, yet the substantial of the bond were, viz. "I David Trench, stationer in Edinburgh," and these words

A bond found to be holograph in which only the debtor's name, sum, and dates,

No. 112.
were filled up
with his own
hand.

“ of 4000 merks” twice repeated, “ and £400 of penalty,” and the date, which are not like a single subscription not cognoscible by witnesses; but many tickets among merchants contain not so many words in all; so that one witness being *semiplena probatio*, the same might be completed by a probation far stronger than one witness, viz. many witnesses that knew the hand-writing, and who heard David Trench acknowledge himself debtor to Helen Sim. Likeas, there is produced a discharge granted by Helen Sim of a term’s annual, paid to David Trench’s wife, shortly after his death, who knew all his affairs, and kept his shop.

The Lords before answer having ordained witnesses to be examined, their oaths were this day advised, and the particulars aforesaid were found proved, and the bond was sustained.

The defenders did make no debate at the advising, and the Lords did remember that in Hartrie’s testament, the body whereof was written with another hand, there were blanks for filling up some sums and childrens’ names, which being proved to be filled up with his own hand, the testament was sustained without witnesses; and here there was one witness, and the particulars foresaid proved to be Trench’s hand-writing, and the matter being betwixt Helen Sim and Trench, who are both merchant’s-shop-keepers.

Stair, v. 2. p. 309.

No. 113.

1682. January 17. DEWAR against BEATSON of Kilrie.

Found that when the first notary says *de mandato*, the *co-notarius* need not add the words *de mandato*; and that a deed is valid though the witnesses subscribing thereto were not designed in the body of the writ.

Harcarse, (SUBSCRIPTION) No. 591. p. 253.

No. 114.

1682. November. STEVENSON against STEVENSON.

In an action at the instance of James Stevenson against William Stevenson, son to the deceased William Stevenson, skipper in Pittenweem, the Lords found a bond null, in respect one of the witnesses deponed that he did not see the party subscribe the bond.

Sir P. Home MS. v. 1. No. 253.

* * The like found 12th February 1684, Blair against Peddie, No. 27. p. 13942.
vide REPARATION.