

No 568.
ed or not.
The other
witness posi-
tively denied.
There being
another man
of the same
and designa-
tion, the writ
was not found
false, because
it was not
shewn the
subscription
was not that
of this other
man.

their subscriptions being all of one hand-writing ; after examination of the witnesses, the LORDS having ordained James Lindsay to depone anent the verity of the said discharge ; and he having declared, that he did truly subscribe a discharge, but that it was of a particular sum, and not of the whole executry belonged to his wife, and that any general discharge was only granted by him in trust, and received and cancelled before the death of the tutor whom this defender represents ; and the witnesses' depositions being considered, whereof one was John Ormiston, who was son-in-law to the pursuer, who declared that he could not say whether the hand-writing was his own or not, but was positive that he did never see James Lindsay subscribe the same ; as likewise, another witness named John Smith, who was designed servitor to Stephen Rob, who did depone that he was servant to the said Stephen, but that he did not subscribe nor was it his hand-writing ; and for reconstructing the verity of the discharge, it being *alleged*, That Ormiston had produced the same in a process at his instance judicially as a ground of pursuit, which was proved by the Bailie's deposition and the clerk ; as likewise, it being *alleged* and proved, That there was another John Smith, who was servant to the said Stephen Rob at that time ; the LORDS having considered the allegiances and probation *hinc inde*, did assoilzie from the improbation, being moved with these reasons ; that the defender was a minor, and it could not be imagined that he, or any other for him, could forge a discharge for so inconsiderable a sum as the fifth part of an executry which was never liquidate ; and that the said John Smith, who was the only denying witness, might not have been the person who subscribed, there having been another proved to be of that name and designation, and no other hand-writing produced to shew that the subscription could not be his, which was found necessary in a former practick, Sir William Stewart of Kirkhill against Kettleston, No 564. p. 12654. ; as likewise, that it was proved *per membra curiæ*, that this was the discharge produced in process after the death of the tutor ; and thereupon assoilzied from the pursuit.

Fol. Dic. v. 2. p. 265. Gosford, MS. No 761. p. 761.

1678. February 20. JO. STORACH *against* Mr THOMAS CHEYNE.

No 569.

THE LORDS sustained this reason of reduction of a bond to be proved by the witnesses inserted, that they did not hear the pursuer give mandate to the notary to subscribe for the party.

Fol. Dic. v. 2. p. 264. Fountainhall, MS.