

1683. *November.* ——— *against* ALEXANDER BLAIR.

No 190.

AN Englishman at London, and his factor, having pursued a Scotsman upon an English bond granted by him to the constituent, the defender proponed improbation, and craved the factor for the creditor might abide by the bond, and not only design the witnesses, but produce them; seeing, if the creditor were pursuing in England, the law there could oblige him to instruct the bond by the deposition of the witnesses; and though the solemnities in their writs, different from ours, are not considered, yet defences against them, and the import of them, are to be regulated by the English law.

THE LORDS found the factor needed not to abide by the writ, because his constituent was ready to abide by it; and that it was sufficient to design the witnesses by known designations, so as they may be found out. (This case and the following seem to be the same.)

*Harcarse*, (IMPROBATION and REDUCTION.) No 541. p. 150.

1683. *November 8.* CALDWELL *against* BLAIR.

No 191.

ONE as factor for an Englishman, pursues another upon a double bond of L. 12 Sterling in the English form. The debtor offers to improve it as false, and craves the pursuer may abide at it. He declines as being only factor, and not concerned farther to abide at it than that it was truly delivered to him: "THE LORDS found the factor either obliged to abide at it simply, seeing he made use of it, or else to produce his constituent to abide by it. And because English bonds do not design the witnesses, ordained the factor to condescend on the witnesses' designations, till which were done, they would not burden the improver to consign." See Stewart against Riddoch, No 180. p. 6758.

*Fol. Dic. v. 1. p. 457. Fountainhall, v. 1. p. 241.*

1683. *December 12.* A. *against* B.

No 192.

ONE being charged upon his bond of attestation of a cautioner in a suspension, he offered to prove the act and subscription as false, and craved the charger might abide at it as a true deed. *Answered*, This was not in the case of ordinary bonds, where creditors see them subscribed; but this was taken by the clerks of the bills, from whom he had the extract. "THE LORDS found he could only be holden to abide by it *qualificate*, viz. that it was truly so delivered to him by the clerk of the bills and his servants."

*Fol. Dic. v. 1. p. 456. Fountainhall, v. 1. p. 250.*