

can the condescence upon one man for another be admitted? Again, though in the interpretation of writs formal as to the solemnity, an error in one part may be explained or corrected by another; if the substantial solemnity of a writ were allowed to be corrected by a condescence, and probation of extrinsic facts not contained therein, our security by the act 1681 is at an end, at least altogether precarious. The designations of persons in executions or libels are in a different case; for these may be drawn over again, if wrong at first; but a *jus quæsitum* through the nullity of a voluntary conveyance cannot be taken away from parties interested, by a subsequent condescence. And a messenger may more easily mistake the names of witnesses, than the granter of a bond or assignation will mistake the persons subscribing to his deed.

The Lords unanimously sustained the nullity, and found it not suppliable, now after the act of Parliament 1681; and declared they would decide so in all time coming.

Forbes, p. 179.

1708. February 20.

MARGARET BOSWAL and WILLIAM HAMILTON of Grange Breich her Husband,
against CORNET GEORGE BOSWAL.

No. 307.

In the action at the instance of Margaret Boswal and her husband, against Cornet Boswal her father, the Lords sustained a marginal note upon the pursuer's contract of marriage in favours of the Cornet; albeit no witnesses were subscribing thereto, and the contract did not bear that the witnesses to it, were also witnesses to the marginal note; in respect the pursuer's double of the same contract produced by themselves bore the very same marginal note, and they did not disown the verity of their subscription thereof.

Forbes, p. 248.

1709. June 7. HAY of ARNBATH against The DUKE of GORDON.

Sir Patrick Ogilvy of Boyne holding some lands as vassal to the Duke of Gordon, and having sold them to Arn bath, he agrees with the Duke, and grants bond for 1600 merks, as a year's rent of these lands for an entry, and obtains the Duke's charter to himself, and a bond from him, whereby the Duke obliges himself, that how soon Arn bath shall present a charter to him of the lands sold by Boyne to Arn bath, containing the old *reddendo*, he shall grant a charter of confirmation thereof in favours of Arn bath. The Duke being pursued by Arn bath upon his bond, to confirm his right; it was alleged for the Duke, his bond was null, because it wanted the date, place, and designation of the witnesses, which are *inter essentialia*

No. 308.

An informal writ supported as being relative to other writs, which possessed the forms requisite at the time they were executed.

No. 308. *obligationum*, and by our fifth act 1681, are not now suppliable by any condescendence to be made; and all writs not designing the witnesses in the body shall be null, and make no faith in judgment, nor outwith the same. Answered; It is indeed acknowledged the bond labours under the foresaid nullities, yet it is a relative writ, expressly bearing, that Boyne had given the Duke a bond for the entry, and that the Duke had granted Boyne a charter as his vassal; and both which writs being formal in all the solemnities of date, place, and witnesses, the Duke's bond now pursued on must be reputed *pars contractus*, and of the same date; and to supply all defects, that this bond was of the same date with the other writs produced; and was all done and transacted in 1680, and so falls not under the act of Parliament founded on, which is not till August 1681; and that it is his Grace's subscription is simply referred to the Duke's oath, and which was sustained in two late cases, the one betwixt Thomas White, and Sir George Hamilton, and the other, the woollen manufactory of Aberdeen against James Fife, where the want of witnesses was supplied by referring the verity of the subscription to the party's oath. Replied, The Duke oppones the act of Parliament, which makes it an unsuppliable nullity, unless you refer not the single subscription, but the whole transaction to his word of honour, which privilege now, by the union, the Peers claim. The Lords found this was not in the case of the act 1681; seeing it appeared, by the context of the writs produced, it was done in the year 1680; a year before the said law was made; and therefore found it relevant for supporting the said bond, to offer to prove by the Duke's oath, that it was truly his subscription, and was signed in the year 1680, of the date of the charter and other bond produced, and so prior to the act of Parliament founded on. The Duke's prejudice was, Boyne being broke, he wholly lost the debt.

Fountainhall, v. 2. p. 500.

1710. *January 4.*

THOMAS LOGIE Merchant in Edinburgh, *against* PATRICK FERGUSON Merchant there.

No. 309.

In the process at the instance of Thomas Logie, against Patrick Ferguson, as representing John Ferguson cordiner in Edinburgh his father, founded on an obligation, subscribed by him before witnesses, and bearing the writer's name without any designation; the Lords found the said writ, which was granted since the act of Parliament 1681, null for want of the writer's designation; albeit the pursuer offered to prove by the defender's oath, That the obligation was truly subscribed by his father, and still unsatisfied; and alleged that the statute 1681 prohibiteth supplying by condescendence only, without prejudice to supply by other methods.

Ferbes, p. 384.