

1710. *December 22.*

ELIZABETH DICKSON and PATRICK HERIOT, Merchant in Fisherrow, her Husband, *against* MRS. ISOBEL LOGAN, Relict of MR. JOHN DICKSON Secretary to the Marquis of Tweddale.

No. 152.

A contract of marriage sustained, although the writer thereof was no otherwise designed than "future spouse to the other party contractor," to whom he therein assigned some bonds that designed him.

In the action at the instance of Elizabeth Dickson, as executrix *qua* nearest of kin to Mr. John Dickson her brother, and her husband for his interest, against the Marquis of Tweddale and others, for payment of certain sums they were owing to Mr. John by bond; compareance was made for Isobel Logan his relict, who produced a contract of marriage betwixt Mr. John Dickson and her, written by himself, containing a disposition of the foresaid sums to himself and her, the longest liver in life-rent, and the children of the marriage in fee, which failing to her heirs, executors, or assignees.

The pursuer repeated a reduction of the contract, alleging it to be null, in so far as, albeit of a date since the act of Parliament 1681, it doth not design the writer, but bears only to have been written by the said Mr. John Dickson, who is not designed in the body of the writ.

Answered for Mrs. Isobel Logan: The designations of persons in writs being introduced only ad evitandam personarum incertitudinem, et ad discriminandas ejusdem nominis personas; where constat de persona, by his singular name or otherwise, no farther designation is necessary; and so it is, that Mr. John Dickson was designed sufficiently, the contract mentioning that he and Mrs. Isobel Logan did accept each other as their lawful future spouses, who were afterwards married, and the pursuers cannot condescend upon another Mr. John Dickson and Mrs. Isobel Logan, who were contracted and married; *2do*, By the contract Mr. John Dickson assigns the bonds pursued for to his wife, in which bonds he is specially designed, and the relative word "said" in the latter clause, viz. written by the said Mr. John Dickson subsequent to the assignment, refers to the creditor mentioned and designed in the bonds assigned; *3tio*, Contracts of marriage are favourable and often sustained, though wanting some of the formalities necessary in other writs; as one notary is sufficient to sign a contract of marriage, and a Minister may perform the part of a notary in such a contract, neither of which would be allowed in other writs.

Replied for the pursuers: The act 179. Parl. 13. James VI. requires the writer of a paper to be designed particularly by his dwelling place, or his employment, or other denomination; and the Lords are so nice in observing the designation of persons in writs, that in the case betwixt Abercromby and Innes, (Sect. 11. *h. t.*) they annulled a writ upon the account of a mistake in the Christian name, and would not allow the error to be helped, albeit constabat de persona, and the designation was full and ample. Now, that of future spouses, cannot pass for a certain designation, because many might be contracted and not married; *2do*, Seeing the contract doth not mention that the bonds were granted to Mr. John

Dickson, non constat the bonds pursued for are those assigned; for Mr. John Dickson might have been creditor to the Marquis of Tweeddale and Lord Yester by assignation to their bonds.

The Lords found, That Mr. John Dickson was sufficiently designed, and therefore repelled the reason of reduction. See FALSA DEMONSTRATIO.

*Forbes, p. 465.*

No. 152.

1712. February 14.

MR. ALEXANDER ORR, Son to the deceased Mr. Alexander Orr, Minister of the Gospel at St. Quivox, against JOHN WALLACE of Camsescan.

A bond was granted to the deceased Mr. Alexander Orr, in the terms following, "I Mr. John Hannay, Minister at Craigie, grants me to have borrowed and received from Mr. Alexander Orr, the sum of £100 Scots, which I as principal, and John Wallace of Camsescan as cautioner, bind and oblige us conjunctly and severally," &c. which bond, after the clauses of relief and registration, concludes thus, "In witness whereof, I have written and subscribed these presents at Air the thirty one day of May, one thousand seven hundred and five years, before these witnesses, Robert Wallace of Cairnhill, and James Ferguson Doctor of the grammar school at Ayr;" and the bond is signed by the principal and cautioner, and the foresaid two witnesses. Mr. Alexander Orr, as having right to this bond from his father, pursued John Wallace, now of Camsescan, as representing his father the cautioner, for payment, who alleged the bond to be null, in so far as concerns the cautioner; because it doth not bear, that the witnesses inserted are witnesses to his subscription, but only to the subscription of Mr. Hannay the principal debtor; for though the plural number may be made use of to demonstrate a single person, as *more magnatum*, "We" is put for "I;" yet it was never pretended, that either in good grammar or sense, "I" was ever used for "We;" and therefore the rule, Et de me solo, &c. takes no place here.

The Lords repelled the nullity, and sustained the bond; for these words, "We bind and oblige us," in the obligatory part of the bond, might well connect with the words, "Before these witnesses;" and both writer and witnesses being designed, though the words, "And have subscribed," had been left out, the bond would have been valid, as if it had run thus, "I Mr. Hannay, and with me Camsescan, bind and oblige us to pay, &c., in witness whereof, written by the said Mr. John Hannay, before these witnesses." Again, though the words "and subscribed" may at first view seem to relate to "I have written;" yet they may be read disjointly, so as the words "and subscribed" may relate to the whole tenor of the writ; that is, I as principal, and with me Camsescan, have subscribed. Besides, in every ambiguous interpretation, that sense is to be followed

No 153.

A bond whereby one as principal, and another as cautioner, bound themselves "conjunctly and severally," was sustained against the cautioner, although the bond written by the principal debtor concluded thus, "In witness whereof, I have written and subscribed these presents."