

the act 1696, which requires all the pages to be signed as the margins were before, whereby the signing of each page is a substantial requisite.

No. 21.

Accordingly, the Lords having considered the form of the attestation, and that the Earl of Home signs only consentor on the last page, found, "That his subscription does not debar him from quarrelling the title of the pursuers to the half of Lady Marjory Home's provision, and remitted to the Ordinary to proceed accordingly."

It was urged by such of the Lords as differed from this judgment, that the act 1696, requiring the pages to be signed as margins were before, did not absolutely annul deeds as to all parties who did not sign every page; for when margins were in use to be signed, if some of the parties signed the margins, whereby *constabat* that the deed was fair, that was enough to make the deed effectual against all the parties signers of the last page, although some of them had not signed the margins. Thus, where a disposition granted by a wife with consent of her husband, was signed on the margins by the husband only, it was sustained, although the wife, who was the principal disponer, signed only the last page.

*Kilkerran, No. 13. p. 610.*

\* \* D. Falconer's report of this case is No. 44. p. 5662. *voce* HOMOLOGATION.

1748. February 11. TAYLOR against LORD BRACO.

No. 22.

The Lords have now in three several instances sustained a bond granted by a principal and cautioner, docqueted thus; "I have subscribed these presents before these witnesses," &c. First on February 14, 1712, Orr against Wallace, *infra, h. t.* though the witnesses might, notwithstanding of what the docquet asserts, have only seen one of them subscribe, and no matter which as to the cautioner; and afterwards, January 15, 1734, Gilmour against Black, a bond by principal and cautioner, docqueted in the same manner, was sustained in respect of the former decision. And now of this date, the bond by Geddes younger of Esset as principal, and Geddes elder of Esset as cautioner, whereof mention is made, *voce* CREDITORS OF A DEFUNCT, No. 8. p. 3128. was sustained, in respect of these two decisions, being docqueted thus, "I have written and subscribed these presents before these witnesses."

Bond by principal and cautioner good, though the testing clause be, "I have subscribed these presents."

*Kilkerran, No. 14. p. 612.*

\* \* D. Falconer reports this case :

In the cause between these parties, No. 8. p. 3128. it was further pleaded in a bill against the interlocutor 26th November, that it appeared by the bond, Andrew Geddes the son was principal debtor, and Archibald the father

## No. 22.

cautioner; Andrew owned he was resting owing, and he as principal, and with him his father as cautioner, bound and obliged themselves; and it was tested thus, "I have written and subscribed these presents, before these witnesses;" so that Archibald the father's subscription was not attested.

At advising the bill and answers, observed on the Bench, That this precise objection had been repelled, 14th February, 1712, Orr against Wallace; and 15th January, 1734, Gilmour against the Representatives of Pollock.

The Lords repelled the objection.

Act. R. Craigie.

Alt. H. Home.

Clerk, Kirkpatrick.

D. Falcover, v. 2. No. 238. p. 322.

1749. November 30. CROSBIE and PICKENS against PICKEN.

## No. 23.

Case of a person accustomed to subscribe only by initials, writing his name at length from a copy, or upon marks drawn on the paper for his direction.

In February 1742, the deceased Robert Picken, weaver in Glasgow, disposed to Janet Crosbie his wife in life-rent, and to Marion his daughter in fee, with the burden of £100 to Barbara his other daughter, an adjudication at his instance of certain tenements in Glasgow for the accumulated sum of £493. 14s. Scots; of which disposition Robert Picken his son did, after his father's death, obtain a decree of reduction in absence.

The relict, and her said two daughters, pursued a reduction of this decree; in support whereof, Robert Picken the obtainer of it, objected to the disposition as null, in respect that though it bore to be subscribed his father Robert Picken, and had his name thereto subjoined *ad longum*, yet in fact he never could write, nor ever used to subscribe otherwise than by the initial letters of his name R. P. A conjunct probation was allowed as to the manner in which the disposition was executed, and with respect to the defunct's having shown the disposition in his life-time, as had been alleged for the defender.

It appeared upon the proof, that the defunct had been in use to subscribe only by initials; and a variety of writs, no less than 25 or 26, in the small matters in which he was in use to deal, as also three indentures to which he was a party, all signed by his initials, were exhibited, some of them but a short time before, and others of them after the date of this disposition: And some of the witnesses deponed, that on one or other of these occasions he had said, "that he could sign no better, and that R. P. had cost him much good money." On the other hand, of three instrumentary witnesses, one only was alive, who deponed that he saw the defunct subscribe the disposition, and that he wrote his name as it now stands at the deed, from a copy laid before him. It was also proved, that the defunct had shown the deed to several of his friends and acquaintances, to whom he expressed his satisfaction in what he had done by it.

Upon advising this proof, the Lords, upon July 22, 1749, "Sustained the disposition, and reduced the decree," several of the Lords being *non liquet*.