

1752. June 4. CAMPBELL against M'LACHLAN.

No. 325.

A missive letter by which the subscriber bound himself as cautioner to the heritor for his tenant, that he would see his rent paid, not being holograph, but only subscribed, was found proveable by witnesses to be of the subscription of the cautioner.

Kilkerran:

* * This case is No. 44. p. 12286. *voce* PROOF.

1760. July 9. MACDONALD Collector of Excise against MACNEIL of Taynish.

No. 326.

Bond to the King effectual, though not bearing the words *Domino Regi*.

Unintelligible bond explained by extraneous evidence.

Neil Macneil of Taynish, grandfather to the defender, on the 21st May 1714, granted an obligation of the following tenor: "Binds and obliges him, his heirs, &c. to content and pay to William Renton collector of the excise of Argyleshire, and his successors in office, the sum of £12 Sterling, for the excise of the hail brewers within the lands therein mentioned, for the space of one year complete, commencing from the 1st of November instant to the 1st of November 1714 years, being £3 Sterling quarterly, beginning the first quarter's payment thereof at and against the 1st day of February next to come, and so forth quarterly," &c. Macdonald, the present collector, brought a process against Taynish, for payment of £5, 10s. as the balance of two quarters resting by his grandfather, and for interest.

Pleaded for Taynish the defender, No action can be sustained upon this bond, *1mo*, Because, by statute 39th of the 33d year of Henry VIII. all obligations taken to the King are to be made in those words, *Domino Regi, et solvend. eidem Domino Regi*; whereas the bond in question, which is for excise-duties, is taken to another person, and does not so much as bear to be for the use of his Majesty: *2do*, Because the bond is absolutely unintelligible, and cannot be the foundation of any judgment.

Answered for the pursuer, The defence upon the English statute was over-ruled by the Lord Ordinary in August 1754, and his judgment is now final. But besides, the defence is not good. The statute enacts, That all obligations shall be taken in these words; but it does by no means annul those that are taken in different terms. The only penalty is, that persons who take such obligations in other words may be imprisoned; but the obligation is still effectual. Agreeable to this it was decided 27th November 1735, Commissioners of Excise against Mitchell of Pittheadie. (See Appendix.) Though the bond is inaccurately wrote, yet it may be understood; and is explained from the excise-books, which demonstrate,

that the year agreed upon was. from the 1st of November 1714 te the 1st of November 1715.

No. 326.

“ The Lords found Taynish liable only for the £5 10s, of principal, but not for interest.”

Act. *Advocatus.*Alt. *Ro. Campbell.*Clerk, *Justice.**Fac. Coll. No. 227, p. 419.*

1761. *February 2.* DAVID YOUNG *against* JAMES RITCHIE.

James Ritchie having pursued David Young for payment of a bond for £261 granted to him by David Young and Archibald Campbell, Young defended himself by bringing a reduction of the bond as forged *quoad* his subscription.

In these processes the instrumentary witnesses to the bond agreed in swearing, that when they signed witnesses to the bond, David Young was not present, neither was his subscription at the bond.

But as there were circumstances in the case which created a strong suspicion that Young had, at an after-period, though not before the instrumentary witnesses, signed the bond, Ritchie contended, That a proof of Young's subscription, though after the date of the bond, and not in presence of the instrumentary witnesses, would validate the bond. Young, on the other hand, contended, That the bond was null and void.

“ The Lords found the bond not probative.”

For Ritchie, *Lockhart, Advocatus et Garden.* For Young, *Ferguson, et Jo. Dalrymple.*

Clerk, *Justice.**J. C.**Fac. Coll. No. 13. p. 242.*

1772. *July 21.*

THOMAS CRICHTON and ANDREW DOW *against* PETER SYME.

Upon the 6th October, 1763, James Gordon, as principal, with Thomas Crichton and John Paton, as cautioners, granted bond to the society of wrights in Paisley for £10 Sterling.

Upon the 4th April, 1766, Gordon and Peter Syme subscribed a missive letter to Crichton, binding themselves, conjunctly and severally, to free and relieve him of the said bond. And, of the same date, they granted a missive to Andrew Dow, narrating, that Paton, the other cautioner in the bond to the wrights, had come under that obligation only upon condition that Dow should become surety for one half of the sums therein contained; and that, as Dow had accordingly granted said security, therefore Gordon and Syme are taken bound, jointly and severally, to relieve Dow of the security granted to Paton, and of all damages and expenses.

No. 327.

Subscription of party after subscription of instrumentary witnesses, and not in their presence, not valid.

No. 328.

Act 1681, C. 5. requiring witnesses, applies to all deeds, whether of importance or not; the act relative to such distinction being 1579, C. 80.

A cautionary obligation, in...