

No 31.  
whole of it,  
where the  
witnesses  
proved the  
verity of the  
subscription.

disposition was false in the date, and that the defunct was *alibi* at the time it appears to have been subscribed; and, therefore, is false in all. It was *answered*, That there was only an error in the date, in respect the same right having been conceived formerly in favour of another, Dumbaith gave order to draw it over in favour of the defender *verbatim*, and the writer ignorantly wrote over the date as it was in that first disposition, which can noways annul the writ, especially seeing it was offered to be proved by the witnesses inserted that the writ was truly subscribed by Dumbaith, and them as witnesses, when he was in his *liege poustie*, against which no allegiance of *alibi* by other witnesses not inserted can be respected.

This having been disputed in the English time, the witnesses were examined before answer, by three of the Judges, and now the cause was advised.

THE LORDS found the defence relevant to elide the improbation, that the writ was truly subscribed before the defunct was on death-bed; and found the same proved by the witnesses adduced, and thereafter assolizied.

*Fol. Dic. v. 2. p. 215. Stair, v. 1. p. 449.*

1667. July 16.

HAMILTON *against* SYMINGTON.

No 32.

A BOND was found null, which being written on two sides, on that side where the subscriptions were, there was nothing but the clause of registration, the other side was entirely filled up with another hand, without any subscription, so that it appeared to have been the last sheet of a writ taken of and filled up upon the back by the pursuer; but being before the act of Parliament 1681, the LORDS declared, that if the pursuer could adduce writs or adminicles, or witnesses, to astruct the verity of the bond, they would hear him upon the same.

*Fol. Dic. v. 2. p. 215. Stair.*

\*\*\* This case is No 2. p. 382, *voce* ALIMENT.

No 33.  
Witnesses  
were *ex officio*  
sustained to  
take away an  
exception,  
that the bond  
craved to be  
paid was *in-*  
*strumentum*  
*apud debito-*  
*rem*; the man-  
ner of deli-  
very being  
most special.

1671. June 15. ELLIS of Southside *against* CHARLES CASS.

SOUTHSIDE having right to a bond granted by Richard Cass, did transact therefor with Charles Cass's curators, as being heir, or apparent heir, to the said Richard, for which he got bond from the said Charles, with consent of his curators, for 5500 merks; against which transaction, Charles being reponed by a decret of reduction, and both parties put in their own place, Southside did pursue the said Charles Cass, as representing Richard, for payment of the said bond. It was *alleged* for the defender, That the bond, which was the ground of the pursuit, was in the defender's own hands and possession, and *instrumentum apud debitorem repertum præsimitur solutum*. It was *replied*, That the said