

1666. June 6. WILLIAM CRAWFORD *against* ANDREW DUNCAN.

William Crawford, as assignee to a bond of 200 merks, granted by Andrew Duncan, pursues for payment. It was alleged, absolutor, because the bond was null, having no date at all, et data est de substantialibus. It was answered, that the pursuer offered him to prove by the defender's oath, that it was his true subscription, which was sufficient; and the date is only substantial, when improbation is alleged, or any right that might take away the writ, if it were of such a date, as a prior assignation or general discharge.

The Lords found the reply relevant, with this provision, that the defender might adject what quality he thought fit, as these mentioned, or that it was done in minority, or not delivered, &c. but they found him not obliged to depone *simpliciter*, upon the verity of the subscription, and to prove such qualities; as they had done before, in a holograph writ, wanting date, the last session, in the process betwixt the Earl of Kinghorn and Sir James Murray.

Stair, v. 1. p. 373.

No. 162.

A bond wanting a date was referred to the oath of the alleged subscriber, with permission to him to add what quality he pleased.

1667. February 28. LAIRD of DURIE *against* ANNA GIBSON.

Umquhile Sir Alexander Gibson of Durie having given bond to his three daughters, for 20,000 merks of portion a piece, and in case of decease of any of them, her portion to belong to his heir-male; but upon the margin there is added, that the portion of the deceasing should accresce to the survivors; this Durie, brother and heir-male, pursues reduction and improbation of this bond, in so far as concerns the marginal addition, upon these grounds, that the same was not subscribed before the witnesses inserted in the bond, nor inserted at that time; and that it is written by another hand than his that wrote the body of the bond, and that it is contrary to the substitution of the body of the bond; and that albeit the writer of the body be inserted in the bond, and that the bond bears, that the date and witnesses are inserted by Durie himself, yet it does not bear that he inserted the marginal addition, which is of greater importance. It was answered, that bonds being subscribed before witnesses, their testimony reaches not only to the subscription on the foot, but to the subscription of joining the sheets, and whole marginal additions, which are as valid as any part of the body, unless it were positively proved by the witnesses that they remember that there was no addition on the margin when they subscribed; and albeit the marginal addition be of another hand, it is offered to be proved that it is the hand-writing of Durie himself, who inserted the date and witnesses, which is more solemn than any other writer, especially seeing the writer was not present, or witness, but only drew the draught of the bond; and albeit he mentions not the inserting of the marginal

No. 163.

Effect of a marginal note without the solemnities.

No. 163. addition, but only the inserting of date and witnesses, that has been, because of the ordinary stile of bonds, whereof the date and witnesses are filled in by another hand, not being ordinary for these to write marginal additions; and as for the importance, or contrariety of the margin to the body, that is most ordinary, especially where the body is but a draught drawn by another hand, who has erred in his intention in the substitution. It was answered for the pursuer, that albeit the marginal addition should be proved to be holograph, yet unless it were proved to have been truly written, and subscribed at the date of the bond, it cannot prove that it is of the same date, or of any date before the defunct was on death-bed, and so it is null, and cannot prejudice the pursuer as heir, especially seeing the defunct having then no sons, might probably adject this in favours of his daughters, contrary to his former intention, which if it should take effect, would ruin the heir male.

The Lords having taken the deposition of the witnesses inserted, and both deponing that they did not remember whether the marginal addition was upon the bond when it was subscribed or no, and that it did appear by inspection, that the marginal addition was by another hand than that that wrote the body, and that it was not mentioned at the conclusion, where the defunct expressed, that he himself was filler up of the date and witnesses, and nothing was adduced to astruct that it was of a true date before his taking bed; upon all these considerations jointly, the Lords found that the marginal addition was not of the date of the bond, and that having no date of itself, it was not instructed to have been done before the defunct was on death-bed, and so was null as to the heir; but the Lords did not find that these allegiances severally could have derogated to the marginal addition, but only that all jointly were sufficient, the matter being also accorded amongst the parties.

Stair, v. 1. p. 453.

1670. February 3. EARL of KINGHORN *against* The LAIRD PITTARRO.

No. 164.
Effect of a
blank.

The Earl of Kinghorn pursues a declarator of the nullity of a bond of 1000 merks granted by his father, and now standing in the name of Pittarro, as creditor on this ground, that he never borrowed the sum from Pittarro, nor delivered this bond to him; but having trusted umquhile Alexander Keith, as his ordinary agent and writer, with this bond, blank in the sum and date, to have borrowed money upon the same, took never effect, but remained so blank in the hands of Alexander Keith, for many years, till his death, and thereafter in his relict's hands till her death, and after her death the blank was filled up, by John Bane her brother, and the date made *in anno* 1647, whereas the bond mentions Alber as cautioner, who died before the year 1640; whereupon Pittarro's oath, and the oath of Alexander Keith, friend to the said umquhile Alexander, being taken, Pittarro acknowledged that the bond was blank, and filled up by the said John Bane, as the reason bears, and that he received the same by advice of this Alexander Keith, in