

1668. *January 4.*

No. 108.

Dow of Aricho *against* CAMPBEL of Calder.

Dow of Aricho having pursued Campbel of Calder, as heir to his father, for payment of a bond, wherein his father was cautioner for the Marquis of Argyle, the bond bore but one witness to Calder's subscription; and George Campbel, one of the witnesses, being examined if he saw him subscribe, deponed negative, but that it was Calder's hand-writing to the best of his knowledge. There were also other writs produced subscribed by Calder to compare the subscriptions.

The Lords would not sustain the bond, having but one witness to Calder's subscription, upon the foresaid testimony and adminicles.

*Stair, v. 1. p. 499.*

1668. *January 24.*

No. 109.

MAGISTRATES of DUNDEE *against* The EARL of FINDLATER.

It being objected against a bond, granted before act 1681, That it was null as to one of the cautioners, having neither date nor witnesses to his subscription; and being offered to be proved, that this cautioner signed the same day, and before the same witnesses with the other debtors in the bond; the Lords, before answer, ordained the witnesses to be examined upon this fact.

*Stair.*

\* \* \* This case is No. 5. p. 3348. *voce* DEBTOR AND CREDITOR.

1671. *June 8.*

No. 110.

Designation applicable to various persons of the same name.

SIR WILLIAM STUART of Kirkhill, *against* SIR GEORGE M'KENZIE and KETTLESTOUN.

Sir William Stuart, as heir by progress to Sir Lewis Stuart, his goodsire, pursues improbation of a bond, bearing to be granted to Mr. John Stuart of Kettlestoun, his son granting an annuity of 3000 merks yearly during his life, and some other provisions: Which bond is assigned by Kettlestoun to Sir George M'Kenzie, and being produced, Kettlestoun has abidden by the same, and has declared upon oath, that he was not present when it was subscribed, but that he received it from his father, as now it is. One of the witnesses inserted, being then Kettlestoun's servant, deponed, that the subscription to this bond as witness is his subscription, but that he did not see Sir Lewis subscribe, nor any of the other witnesses; and remembers nothing of the matter, and that he knows not John Carnegie, servitor

to the Earl of Southesk, another witness insert. The pursuer thereupon craved the defender would more particularly design the other witness John Carnagie, servitor to the Earl of Southesk, because there were several persons servants, or attendants, upon the Earl at that time of the same name, and condescends upon two of them having several designations, beside this common one. The defender alleged that he was obliged to condescend no further, seeing the act of Parliament required no more than the name, surname and designation. It was answered, that the intent of designations being to find out the person of the witness, that he might be adduced in the improbation, a general designation would not suffice, but behoved to be made special, or otherwise, if the pursuer should cite any person of that designation, and that person should deny the subscription, his testimony would improve, or at the best, the defender behoved then to design specially another of the same common designation, otherwise it were a compendious way to all forgery, as if witnesses should be insert of such a name, indwellers in Edinburgh, or any other town; in that case, if the testimony of none of them should improve, there were no remedy for the falsehood.

The Lords found that all the persons that were the Earl of Southesk's servants or attendants at that time, and were called John Carnagy, that were alive, should be cited, and the hand writs of any that were so designed, that were dead, should be produced by either party to be compared with this subscription, that thereby it might appear if the subscription could be astructed by the testimony or hand writing of any other.

*Stair, v. 1. p. 730.*

1671. December 5.

DICKSON *against* DICKSON

No. 111.

A ticket from one brother to another, bearing "That he should bear the half of the expense of repairing a certain house," found null, as wanting witnesses, and not being holograph.

*Stair.*

\* \* This case is No. 167. p. 11490. *voce* PRESUMPTION.

1675. January 23.

VANS *against* MALLOCH.

No. 112.

Umquhile David Trench stationer, having granted a bond to Helen Sim for 4000 merks, she assigns the same to Mr. John Vans her oye, who thereupon pursued Malloch as executor to Trench, who alleged absolvitor, because the bond is null, as having but one witness, and not being holograph. It was answered, that albeit the whole words were not written with Trench's hand, yet the substantial of the bond were, viz. "I David Trench, stationer in Edinburgh," and these words

A bond found to be holograph in which only the debtor's name, sum, and dates,