

SECT. III.

Writer of the Deed.

1634. June 26. LORD JOHNSTON *against* EARL QUEENSBERRY.

No. 77.

The act 179, parl. 1593, requires, That the writer's name and designation be inserted in the body of the writ before inserting the witnesses. This act was found only to extend to obligations, contracts, and such like, not to *actus legitimi*, such as a sasine

Durie.

* * * This case is No. 37. p. 2718. *voce* COMPETENT.

1665. July 15. ROBERT SCOT *against* SILVERTOUNHILL.

No. 78.

Robert Scot pursuing a poinding of the ground, for an annual-rent, Silvertounhill compeared, and alleged possession, by virtue of a prior annual-rent, and that the pursuer's infetment was base, not clad with possession. For proving possession, Robert Scot produced discharges granted by the annual-renter to the heritor for the time, for himself, and in name of the tenants, which had witnesses, but designed not the writer's name; and being alleged to be null for want thereof;

The Lords ordained Scot to condescend upon the writer of the discharge in respect the annual-rent did extend to £80. and it did prefer one annual-rent to another.

Stair, v. 1. p. 399.

1675: January 7. LAIRD OF LUSS *against* EARL OF NITHSDALE.

No. 79.

A bond being alleged to be granted by the Earl of Nithsdale, *in anno* 1621, to one Colquhone and his wife, for 6000 merks; and a pursuit being intended thereupon; it was alleged, That the bond was most suspicious, being so ancient and nothing done thereupon; and in respect of other great presumptions, viz. the quality and condition of the said Adam when the said bond was granted, being

Uncertain
designation
of the writer
of the deed.

No. 79. designed the Earl's servant ; and that it was improbable, he could have so much money to lend his master, or that he and his heirs should have so long wanted the same ; and that it appears, that the bond has been blank *ab initio*, the creditor's name being filled up with another ink ; and the said Adam being designed to have been the writer of the bond ; and yet where it bears that he is writer, it does not bear the said Adam ; which it would have borne if his name had been filled up from the beginning ; and it appears, that the Earl being known to be a person negligent, and being at London for the time, and having to do with money, might have given the bond to the said Adam his servant for raising of money, and that he forgot to call for it :

The Lords found, That the said bond could not be taken away upon the presumptions foresaid ; unless it were either prescribed, or the defenders would offer to improve it.

Clerk, *Gibson*.

Dirleton, No. 215. p. 100.

No. 80.

1676. February 22. OGIIVIE against BUCKIE.

Improbation being proponed against a discharge, after the same had been questioned as null, because it wanted the writer's name, at least he was not designed ;

The Lords found, The said writ null and not probative, unless the pursuer should condescend upon a writer living ; at least, if he were dead, should produce writs written or subscribed by him, to the effect the pursuers may thereupon have the means of indirect probation entire.

Act. *Mackenzie*.

Alt. *Thoirs*.

Dirleton, No. 343. p. 164.

1683. November 29.

AGNES and JEAN WATSONS, against JOHN SCOT in Belford.

No. 81.

Agnes and Jean Watsons, pursue John Scot in Belford. Alleged, A disposition was null by the late act of Parliament in 1681, because it did not design the writer and filler up of the witnesses' names and designations at the tail of the writ, and that it was not suppliable now by condescending on the writer. " The Lords found it no nullity that the inserter of the witnesses' names and designations was not mentioned nor insert." It were a more material nullity if the filler up of the date, the sum, the creditor's name, or terms of payment, or marginal notes, were not expressed.

Fountainhall. v. 1. p. 246.