

No. 155. fore some moved that Mr. Dudgeon might, before answer, be examined, if he truly wrote this paper. But our statute in 1681, declaring the want of a designation un-suppliable, this was laid aside; and the writ being conceived in the Scots form, and yet disconform to our law, the Lords found "Gentleman" no sufficient designation, and so annulled the writ.

Fountainhall, v. 2. p. 759.

1714. November 9. HALDEN of Lanerk, *against* KER of Cavers.

No. 156.

A bond was found null, because one of the witnesses was designed "A. B. inserter of the sum," without any other precise distinction.

In a competition for mails and duties of the lands of Middlemaswalls, betwixt the said parties, Halden objected, That the bond which was the ground of Caver's adjudication, was null, one of the witnesses not being designed, and not suppliable after the act 1681, being dated *in anno* 1683.

Answered for Cavers, That the witnesses being thus insert in the bond, "Gilbert Elliot inserter of the sum, and Archibald Nielson servitor to the Laird of Cavers" and they both being servants to Cavers at the time, they were sufficiently deisgned, the above designation being applicable to both; so that Cavers did not impugn the act of Parliament, but only accommodate the words specially inserted to answer the design of the act, since there was really a designation in the writ. And this differs from cases preceding the act, where, when there was no designation at all, the Lords used to allow a condescence and proof; but here there is a designation, and the question only, how it shall be applied? Neither is it incongruous, where two are set down, to apply the predicate (which here is the word *servitor*) though in the singular, to both; *2do*, The letter (s) has only been an omission; so that it is not so much the supplying of an omitted condescension, as supplying the *vitium scriptoris*; or not so much the condescending upon the designation not to be found in the writ, as helping a literal escape.

Replied for Lanerk, That in the above clause Archibald Neilson is only designed, and Gilbert Elliot hath no designation, for "inserter of the sum" designs no person; and to apply the words "servitor to the Laird of Cavers" to Gilbert Elliot, is a plain force, and may be used almost in every case to elide the act of Parliament. And as to the application of a singular predicate to plural subjects, as that way of expression was rarely used, and only by poets, among the Romans, so it was never received in our language; nay, even in Latin it was never used in expressing the securities of men's rights, these not being to be shaken loose upon grammatical or rhetorical turns, much less upon poetical flights of expression. To the second, replied, that if *vitium scriptoris* could be held for an excuse, it would go by much too far; for though it may be sometimes sustained, where from other clauses in the same writ, it appears that the error is merely an escape in writing, but substantially there is no error; yet it is not so here, where there is nothing in the bond to persuade that Gilbert Elliot was Cavers's servant; but rather the

contrary; for if he was, the easy designation had not been omitted. One letter might perhaps have done it, without repeating the whole designation, and yet it falls out in this case, that a single letter may have that import as to make the bond either stand or fall. No. 156.

The Lords found, that the witnesses were not sufficiently designed; and therefore that the bond was null.

For Lanerk, *Dalserf.*

Alt. *Sir Wal. Pringle.*

Clerk, *Gibson.*

Bruce, p. 1.

SECT. VI.

Other Requisites.

1621. December 11. HAMILTON against SINCLAIR.

William Hamilton sometimes of Samuelstoun, having given his bond to Sinclair his mother, for payment of a certain yearly duty to her, so soon as he gets possession of the teinds of Swinton; whereupon he being pursued for payment thereof to her, compares and excepts, that the bond is null, because it wanted a date, viz. day, month, and year, and therefore could not produce any effectual action. The Lords repelled the allegiance, because the pursuer offered to prove by the witnesses inserted, the date and time of the subscribing thereof; and that the bond obliged the defender to make payment, how soon he became in possession of the teinds, whereas the pursuer offered to prove in his summons, that the defender became in possession thereof, before the years acclaimed from him by the pursuer in that pursuit.

Clerk, *Hay.*

Durie, p. 5.

* * The like found 15th January, 1662, Grant against Grant, No. 176. p. 11497.
voce PRESUMPTION.

1625. July 22.

A. against B.

The Lords found a tack of the teinds of Fintry null, because it was written *in substantialibus* five years for three years; and sicklike a sasine null, because it was

No. 157.

A bond sustained wanting a date, having a term of payment.

See No. 169. *infra.*

No. 158.