1741. *July* 17.

ALEXANDER BROWN, Writer in Airdrieton, *against* ANDREW CRAWFURD of Lochcoat.

No 26.
Found, that verity of a holograph note might be proved, even after twenty years, by the defender's oath, who was the writer's son.

JAMES CRAWFURD, then of Lochcoat, the defender's father, granted a note to Mr John Brown, the pursuer's father, of date the 5th of July 1709, in these terms: 'Received from Mr John Brown fifteen pounds Sterling, which I oblige me to repay, as witness my hand,' &c. Upon this note, Alexander brought a process against Andrew Crawfurd for payment.

At first, the defender *pleaded*, That the note was null; upon which the pursuer offered to prove, by the defender's oath, the same was holograph of his father; which he failing to do, was held as confessed.

Thereafter the defender *pleaded*, That, admitting it to be holograph, it was prescribed, being more than 20 years since the same was granted.

Answered for the pursuer; That he offered to prove, by the defender's oath, that the subscription was his father's, at least that he had no just reason to deny the same.

Replied, The quality of proving the subscription by the defender's oath, in the act 1669, only concerns the case where the subscriber of the holograph writ is pursued. The words of the statute are, 'Holograph bonds, and subscriptions in count-books, without witnesses, not being pursued for within 20 years, shall prescribe in all time thereafter, except the pursuer offer to prove, by the defender's oath, the verity of the said holograph bond and letters.' And Sir George M'Kenzie, in his observations on this act, says, that holograph deeds, not pursued on within 20 years, are only to be proven by the oath of the subscriber, an authority which must have great weight in explaining the act, as it would seem he was present in that Parliament. Besides, it is obvious, the intent of the law was to establish a prescription to all such incomplete writs, as, by their nature, were supposed not to be permanent, and understood by the parties contracting to endure for a short time; so that it is submitted, whether or not the meaning of the words of the statute, to wit, the verity of holograph bonds and letters, do mean the existence of the debt, or that the same is resting owing, and not the verity of the writ, in so far as it was a writ; and surely it would be altogether unnecessary to refer to a party's oath the verity of a holograph bond, seeing that could be done better *comparatione literarum*, which would be more certain evidence than a defender's oath, unless he had some particular occasion of knowing the fact.

It was likewise *objected*, That neither the debtor nor creditor was designed.

Duplied for the pursuer; That the reason why the verity of holograph writs, after the lapse of 20 years, must be proved by the defender's oath only, in order to subject him, is, that the proof of a writ's being holograph is difficult and uncertain by comparison of hand-writing; and to put an end to such un-

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certainty at such distance of time, the law has required a proof of the verity of the deed by the defender's oath, and rejected all other manner of proof: That, where the law makes no distinction, neither ought the judges in the interpretation thereof. It mentions the defender, without limiting to the subscriber of the writ, consequently it must be applied accordingly without distinction; more especially, since it is apparent, that the presumed reason of the law militates in the one case well as the other; and so it was decided in the case betwixt the Earl of Dundonald and Graham of Kilmardinny.—(*See* APPENDIX.) With respect to the observation, that neither debtor nor creditor is designed in the note, there is nothing in it, as the pursuer got the note from his mother, who is general disponee from his father; and therefore, being found amongst his father's papers, who bore the name of the creditor in the note, he must be taken to be creditor. Neither is there any law that requires the designation of debtor or creditor in writs; but, when it is offered to be proven, that this is his father's subscription, this objection must be fully removed.

THE LORDS found, that the verity of the writ in question was probable by the defender's oath.

Fol. Dic. v. 4. *p.* 22. *C. Home, No* 177. *p.* 295.

*** Kilkerran reports this case:

IN a process against the heir of the granter of a holograph writ, he was found to be obliged, upon the construction of the act of Parliament 1669, to depone upon the verity of his predecessor's subscription; the words of the act being, 'Except the pursuer offer to prove by the defender's oath,' &c.; by which it was not meant than an heir's acknowledging, that, in his opinion, it was his father's subscription, was relevant, for that would be no better than the opinion of any other witness who might know the defunct's subscription *comparatione*, and would render the act of Parliament useless; but only that, upon the construction of the act of Parliament, the heir is obliged to depone; and if he should acknowledge that he saw his father subscribe, or the like, it would be the same as if the subscriber himself on life had acknowledged his own subscription. See PROOF.

Kilkerran, (PROOF.) *No* 4. *p.* 441.

No 27.
Oath of party, respecting the onerosity of a bill must be special.

1786. *June* 30. JAMES SWAN *against* JAMES SWAN.

JAMES SWAN having made a reference to the oath of Samuel Swan, with respect to the onerosity of an indorsation of a bill, the latter deponed in general, 'That he paid value for the indorsation, and was an onerous indorsee.' But being requested to mention particularly what the value was, he refused to give any more special answer.