

No. 25. "The Lords repelled the objection."

Act. G. Pringle.

Alt. A. Pringle.

Reporter, Kilkerran.

D.

Fac. Coll. No. 43. p. 64.

1759. February 9.

DUNBAR against INNES.

No. 26:

The testing of a mutual contract bore these words, "In witness whereof these are written by A. B. servitor to the Laird of B. and subscribed by *my* hand at Edinburgh," &c. The deed was signed by both parties. It was objected, that the word *my* did not apply particularly to either of the parties' subscriptions, and could not apply to both; which was urged as a nullity in the deed. The Lords repelled the objection.

Fac. Coll.

* * * This case is No. 315. p. 11644. *voce* PRESUMPTION.

1760. November 19.

SHEPHERD against INNES.

No. 27.

A woman sued a reduction of some bills accepted by herself upon this ground *inter alia* that they were signed by initials, which was not her ordinary way of subscribing. The Lords repelled the reason, as the pursuer did not deny that the initials were of her hand writing.

Fac. Coll.

* * * This case is No. 8. p. 589. *voce* APPRENTICE.

1765. June 21. Sir THOMAS GORDON against JAMES MURRAY of Broughton.

No. 28.

Not bearing in the testing clause to be subscribed by the granter. —Subscribed without his Christian name.—Notarial documents.

Nathaniel Gordon served heir male and of provision in general, to the estate of Carleton, with a reference to the clauses of the entail, and disposed the lands to Alexander his son in fee simple.

Alexander Gordon sold the estate by minute of sale to Alexander Murray of Broughton, who led an adjudication in implement, and also in security of sundry debts, on which he was infeft.

Sir Thomas Gordon of Earlston, the next substitute to Alexander, pursued a declarator of irritancy, for having it declared that Nathaniel and Alexander Gordons had irritated their rights, for themselves and their descendents.

Compearance was made for James Murray, now of Broughton, who pleaded, *inter alia*, that Nathaniel Gordon had right to the estate, independent of the tailzie, by expired adjudications.

One of the adjudications acquired by Nathaniel Gordon was led by George Fullerton of Dreghorn, for the accumulated sum of £2445. 3s. 4d. Scots.

The testing clause of several of the grounds of debt on which this adjudication proceeded, was thus expressed :

“ In witness whereof thir presents, written by Alexander Cairns notar at the burgh of Galloway, the 24th day of August 1669 years, before these witnesses.”

Objected : There are here no words importing that the deed was subscribed by the granter.

Answered : Who the granter was, sufficiently appears from the deed, which is subscribed by him. The writer and witnesses are designed, and the witnesses subscribe, which is all that the law requires.

“ The Lords repelled the objection.”

The conveyance of one of the grounds of debt, in the same adjudication, was subscribed by notaries, with the following docquets :

“ John Gordon nottar-public, at comand of the above named Marion Macgarmorie, with her hand at the pen, affirming she cannot write, be this my subscription. (Signed) JOHN GORDON. Ita est Joannes Calendar notarius publicus, ac co-notarius in præmissa requisitus.”

Objected : *1mo*, The *first* docquet is informal, as neither certifying that the notary subscribed for the party, nor that he had a mandate from her for that purpose. *2do*, The *second* docquet is improbativ, as not subscribed.

Answered : *1mo*. There is no particular stile required in these docquets ; and, it is sufficient, if it appear that the notary authenticated the deed at the desire of the party ; *2do*, The docquets of notaries do not require to be subscribed.

“ The Lords repelled the objections.”

It was farther objected to the same conveyance, that, though it is subscribed by two notaries, there are only *three* subscribing witnesses.

“ The Lords sustained this objection, in so far as the debt conveyed exceeds the sum of £100. Scots.

The assignation by George Fullerton of Dreghorn to Nathaniel Gordon was subscribed, Fullerton of that ilk, without his Christian name.

Objected : This is no subscription. The act 1672, C. 21. requires all, except noblemen and bishops, “ to subscribe by their christened names, or the initial letters thereof, with their surnames ;” adding, that “ they may adject the designations of their lands, prefixing the word *of* to said designations.” This may justify the addition of that ilk, but cannot justify the want of the Christian name.

Answered : The statute does not annul subscriptions contrary to its directions ; but subjects the contraveners to punishment by the privy council.

“ The Lords repelled the objection.”

Act. Lockhart, Wa. Stewart, H. Dundas.
Reporter, Coalston.

Act. Ferguson, Montgomery, Macqueen.
Clerk, Kirkpatrick.