

No 9.
debtor was cited under a wrong christian name, though he was properly designed as to his profession and quality.

Objected for Robert Hamilton, another of the creditors on the estate of West-er Abden ; This sale cannot proceed, for that the common debtor is not called, his name being not George, but William, ' THE LORDS sustained the objec-
' tion,' although it was *pleaded* for Dalgleish, that the description above nar-
rated could not be applied to any other person whatever than the common
debtor ; and that the certainty of the description ought to supply the error in
the christian name.

Act. Garden. Alt. Brown. Clerk, Murray.
D. Fol. Dic. v. 3. p. 205. Fac. Col. No 79. p. 118.

1795. February 17.

The DAUGHTERS of ALEXANDER DRUMMOND *against* The CREDITORS of
MAY DRUMMOND.

No 10.
An erroneous description of the ground of debt for which an heritable bond of relief is granted, does not annul the security.

In the ranking of Mrs May Drummond's Creditors, the daughters of Alex-
ander Drummond, formerly British consul at Allepo, produced two bonds,
for L. 200 each, granted by the said Mrs May Drummond, and their father, to
Lady Jean Gordon ; the one dated 12th, and bearing interest from the 5th
June 1761, and payable at Whitsunday 1762 ; the other dated 17th September
1762, payable at Whitsunday 1763, and bearing interest from its date ; toge-
ther with assignations to these bonds, in consequence of their having paid them
to the creditor. They likewise produced an extract of an heritable bond of
relief, dated 11th January 1765, with the infestment following on it, granted
by Mrs May Drummond to Alexander Drummond, bearing, that the intention
of it was to relieve him of their joint bond for L. 400, granted to Lady Jean
Gordon, on the 19th September 1762, and of another debt to a different cre-
ditor therein mentioned. Upon this interest they claimed to be ranked as he-
ritable creditors ; insisting, that it was evident from the circumstances of the
case, that this heritable bond was meant to apply to the two bonds above men-
tioned ; and particularly, that the writer employed to make out the heritable
security, had been led into a mistake, in describing the grounds of debt, by
Lady Mary Drummond, daughter of, and manager for, Lady Jean Gordon, who,
when applied to by him for information, had sent him the following note, which
was preserved by him, and produced as his warrant for executing the heritable
security in the terms above mentioned :

' The bond granted by Mrs May, and the consul, to my mother, is pay-
' able to herself, and bears date, as I think, the 19th September 1762, is of
' L. 400 Sterling, principal, with annualrent due from the date, at 5 per cent.'

The other Creditors, besides disputing the evidence of the fact,

Pleaded ; Supposing it probable that the heritable bond was meant to apply
to the two bonds produced, still no heritable security can be supported, which

is not clear and precise in itself, without the aid of extrinsic evidence; Reid against Ker, No 3. p. 4154; Dalgliesh against Hamilton, No 9. p. 4163. See also Bruce, Ogilvie against Lesly, No 2. p. 4154. On this account, the security is ineffectual where the creditor is not named; Home, 7th November 1741, Blackwood against the Representatives of Colvil and Russell, *voce* INFESTMENT; or where the lands, over which it is meant to extend, are not properly described; Home, 23d June 1742, Wallace against Dalrymple, *IBIDEM*. There is still more reason that the debt for which it was granted should be ascertained. When, as in the case of Blackwood, infestment is given to the representatives of a particular person, without naming them; or where, as in the case of Wallace, the lands of the debtor are given in security, without describing them, there is an ambiguity to a certain extent; still, however, the security can apply only to a particular description of persons or of lands. But when the debt is not described, and still more when an erroneous description is given of it, although there may be probabilities, more or less strong, there can be no certainty to what debt it relates.

To support the present claim, would weaken the security attending heritable rights. A creditor or purchaser would think himself safe, if there was produced to him, discharged, a bond answering the description given in the heritable security; yet, at the end of twenty or thirty years, when the original parties were dead, two bonds, amounting together to that sum, might be produced; and it might be contended, with the same reason as in the present case, that the heritable security applied to them.

Answered, The heritable security would have been effectual, although it had merely stated, that Alexander Drummond had become cautioner for the grantor of it, to the extent of L. 400, without mentioning the document by which the debt had been contracted, the name of the creditor, or its term of payment. It could not even in that case have been reduced as an indefinite security, because its amount, and the person in whose favour it was created, would have appeared on the infestment. An error in a part of a deed, which might thus have been with safety omitted altogether, cannot be fatal to the security; an error in a superfluous addition, even to an essential part of the deed, such as the name of the creditor, would not have had that effect; 16th November 1749, Dickie against His Majesty's Advocate, No 5. p. 4155; 5th July 1743, Hamilton, No 4. p. 4155; 16th February 1711, Dickson, No 1. p. 4153. Even where there is an error in describing the ground of debt, it may not be altogether clear from the infestment to what debt it was meant to apply. A person, for example, may, at the same time, have become cautioner for another in two bonds of the same dates, to the same creditor, and to the like amount, and the obligation of relief be meant to apply only to one of them. No danger, however, can arise to third parties from an ambiguity of this nature; as the object of granting an infestment in relief is to secure, not the debt, but the person who has undertaken to pay it, they ought to see the obligation of re-

No 10. relief discharged, before contracting on the faith of a subject over which a right of this sort apparently exists.

THE LORD ORDINARY found it instructed by the two bonds for the principal sum of L. 200 Sterling each, the one dated the 12th day of June 1761, and the other the 17th September 1762, granted by the said May Drummond and the said Alexander Drummond to the said Lady Jean Gordon, and by the discharge and assignation of the said two bonds, granted by the said Lady Jean Gordon to the said Christian, &c. Drummonds, dated the 2d June 1772, that a just and onerous debt, to the amount, in whole, of L. 400 Sterling of principal, with interest and penalty, had been contracted by the said May Drummond to the said Lady Jean Gordon, in which Consul Drummond was bound with her, prior to the said heritable bond of relief, and which was paid by the claimants, as his representatives, after his decease: Found it is neither proved nor alleged, that there was any other debt due to the said Lady Jean Gordon by the said May Drummond, in which Consul Drummond was bound with her at the date of the said heritable security, besides the L. 400, contained in the said two moveable bonds of L. 200 each; and that the said heritable security must have been granted for Consul Drummond's relief thereof, although, through mis-information or error in the description of the original ground of debt, the same was said, in the heritable security, to have been constituted by one bond for L. 400, instead of two bonds for L. 200 each; and therefore found, that the claimants Christian, &c. Drummonds, are entitled to hold the said heritable security for relief of the said debt of L. 400 principal, with the interest and penalty due thereon; and ranked and preferred them accordingly.'

A reclaiming petition was (18th November 1794) refused without answers.

A second petition was appointed to be answered; and at advising the cause, a considerable diversity of opinion arose as to the effect of the erroneous description. On the one hand, it was observed, that in cases relating to heritable rights, the will of parties can be carried into effect only in so far as it is expressed *habili modo*; and that as this was a question among creditors, and as in consequence of the blunder in the description, extrinsic evidence became necessary to support the infestment, the claim could not be sustained. On the other hand, a majority of the Court thought, that as the object of the transaction was not to secure the debt itself to the original creditor, but only to give security for relief to the cautioner, it was not necessary that the bond of relief should describe with precision the ground of debt for which it was granted; and that as the identity of the debt was established, and the name of the creditor, and extent of the heritable security, appeared upon the record, no harm could arise from the erroneous description.

THE LORDS, by a narrow majority, 'adhered.'

Lord Ordinary, *Eskgrove.* Act. R. *Craigie.* Alt. M. *Ross.* Clerk, *Menzies.*
D. D. *Fcl. Dic. v. 3. p. 205. Fac. Col. No 158. p. 361.*

See APPENDIX.