

1666. *June 6.* WILLIAM CRAWFORD *against* ANDREW DUNCAN.

William Crawford, as assignee to a bond of 200 merks, granted by Andrew Duncan, pursues for payment. It was alleged, absolutor, because the bond was null, having no date at all, et data est de substantialibus. It was answered, that the pursuer offered him to prove by the defender's oath, that it was his true subscription, which was sufficient; and the date is only substantial, when improbation is alleged, or any right that might take away the writ, if it were of such a date, as a prior assignation or general discharge.

The Lords found the reply relevant, with this provision, that the defender might adject what quality he thought fit, as these mentioned, or that it was done in minority, or not delivered, &c. but they found him not obliged to depone *simpliciter*, upon the verity of the subscription, and to prove such qualities; as they had done before, in a holograph writ, wanting date, the last session, in the process betwixt the Earl of Kinghorn and Sir James Murray.

*Stair, v. 1. p. 373.*

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A bond wanting a date was referred to the oath of the alleged subscriber, with permission to him to add what quality he pleased.

1667. *February 28.* LAIRD of DURIE *against* ANNA GIBSON.

Umquhile Sir Alexander Gibson of Durie having given bond to his three daughters, for 20,000 merks of portion a piece, and in case of decease of any of them, her portion to belong to his heir-male; but upon the margin there is added, that the portion of the deceasing should accresce to the survivors; this Durie, brother and heir-male, pursues reduction and improbation of this bond, in so far as concerns the marginal addition, upon these grounds, that the same was not subscribed before the witnesses inserted in the bond, nor inserted at that time; and that it is written by another hand than his that wrote the body of the bond, and that it is contrary to the substitution of the body of the bond; and that albeit the writer of the body be inserted in the bond, and that the bond bears, that the date and witnesses are inserted by Durie himself, yet it does not bear that he inserted the marginal addition, which is of greater importance. It was answered, that bonds being subscribed before witnesses, their testimony reaches not only to the subscription on the foot, but to the subscription of joining the sheets, and whole marginal additions, which are as valid as any part of the body, unless it were positively proved by the witnesses that they remember that there was no addition on the margin when they subscribed; and albeit the marginal addition be of another hand, it is offered to be proved that it is the hand-writing of Durie himself, who inserted the date and witnesses, which is more solemn than any other writer, especially seeing the writer was not present, or witness, but only drew the draught of the bond; and albeit he mentions not the inserting of the marginal

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Effect of a marginal note without the solemnities.