

- No. 6. Clacherie's oath might be taken, *ex officio*, or *de calumnia*, not simply to refer the debt to his oath, but whether that truly he set to this mark, before these witnesses; but Robert Brown being a dying the Lords would not defer, but decided the case, and found that this writ being a bill of exchange among merchants, and Clacherie's custom so to grant bills of greater importance than this, being clearly proved, and none appearing for him, they decerned against him upon the bill and testimonies, many of the Lords being of different judgment, and that it was of dangerous preparative to encourage forgery; but it was sustained only in all the particular circumstances aforesaid, and not to be a general rule.

Stair, v. 1. p. 595.

1674. January 14. OGIIVIE against EARL of FINLATOR.

No. 7.
A bond written upon two sheets sustained against the cautioner, though side-scribed only by the principal.

Thomas Ogilvie pursues the Earl of Finlator, as representing his father, for payment of a bond wherein his father was cautioner, who alleged absolvitor, because the bond being written on two sheets, and only a part of the clause of relief upon the last sheet, the margin was not subscribed by the cautioner; so that it must have been a collusion betwixt the principal debtor and the creditor, which is the more evident, that the bond hath lain over for many years, without payment of either principal or annual. It was answered, that the principal having subscribed the margin, it was never accustomed for cautioners to subscribe the same, and the last sheet, and the clause of relief thereon mention the principal and cautioner.

The Lords sustained the bond.

Stair, v. 2. p. 252.

1681. June 21. COUTS against STRAITON.

No. 8.

An assignation of a bond of 2000 merks, signed only by initials, being challenged in a reduction by the alleged granters as false; the Lords found it necessary to be proved, not only that the party had been in use formerly so to subscribe, but also that he did actually subscribe the writ challenged, the first *prout de jure*, the other by the instrumentary witnesses only; it being of dangerous consequence to carry considerable rights by such subscriptions, which may be easily counterfeited, and can hardly be redargued *comparatione literarum*; therefore they would sustain no extrinsic witnesses, though it was reported there was only one of the instrumentary witnesses alive, the assignation being of an old date, and nothing having followed thereupon.

Stair.

* * This case is No. 12. p. 6842. *vide* INDIVISIBLE.