

1713. November 17.

MUNGO COCHRANE, Merchant in Glasgow, *against* JOHN BRYSON, Son to the deceased John Bryson, Writer there.

IN a process at the instance of Mungo Cochrane against John Bryson, as representing his father, for payment of 238 Scots, with L. 50 of penalty, and annualrent, contained in his father's bond ;

*Alleged* for the defender ; The bond contains no definite sum of either pounds, merks, or shillings, but only 238 Scots, and, *in dubio*, the smallest sum is to be presumed ; consequently, it can import an obligation only for 238 shillings Scots.

*Answered* for the pursuer, *1mo*, The quality of the sum of 238 is sufficiently cleared to be so many pounds, by the after denomination of L. 50 of penalty, which ever useth to be of the same species with the principal ; *2do*, The bond being wrote by old John Bryson's own hand, who was an ordinary writer, his omission to distinguish the principal sum must be interpreted to his prejudice, unless he can prove, by the comuners and instrumentary witnesses, that the sum to be filled up in the bond was agreed to be merks or shillings ; especially considering, that he read the bond before signing, and expressed a sum before the witnesses, and thereafter asked several persons what might be the import of a bond expressing no definite sum of pounds or merks ; which argue plainly a designed fraud ; *3tio*, By a common practice, a fifth of the sum is always inserted as the conventional penalty in bonds of borrowed money ; and the penalty in this bond is about the fifth part of L. 238 ; whereas, it would be near a third of 238 merks.—THE LORDS found the indefinite sum of 238 Scots to be pounds.

*Fol. Dic. v. 2. p. 162. Forbes, MS. p. 2.*

1724. June 25.

ANDREW PATERSON, Litster in Dryburgh, *against* JAMES WILKISON, Clerk of the Regality of Melrose.

ANDREW PATERSON having raised reduction of a bond granted in the year 1658, by Andrew Riddle, as principal, and Patrick Riddle, his brother, as cautioner, to Andrew Bulman, for 300 merks, and of certain diligences and decreets that had followed on the bond, which now stood in the person of the defender ; it was *pleaded* for the pursuer, That the bond *quoad* Patrick the cautioner was null and improbativ, as not being duly subscribed by him ; there appearing only two letters, which are pretended to be the initial letters of his name.

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No 304.

In a bond where the denomination of the money was omitted, it was presumed to be pounds, the largest.

No 305.

Use of subscribing by initials presumed.