

1752. June 4. CAMPBELL against M'LACHLAN.

No. 325.

A missive letter by which the subscriber bound himself as cautioner to the heritor for his tenant, that he would see his rent paid, not being holograph, but only subscribed, was found proveable by witnesses to be of the subscription of the cautioner.

*Kilkerran:*

\* \* This case is No. 44. p. 12286. *voce* PROOF.

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1760. July 9. MACDONALD Collector of Excise against MACNEIL of Taynish.

No. 326.

Bond to the King effectual, though not bearing the words *Domino Regi*.

Unintelligible bond explained by extraneous evidence.

Neil Macneil of Taynish, grandfather to the defender, on the 21st May 1714, granted an obligation of the following tenor: " Binds and obliges him, his heirs, &c. to content and pay to William Renton collector of the excise of Argyleshire, and his successors in office, the sum of £12 Sterling, for the excise of the hail brewers within the lands therein mentioned, for the space of one year complete, commencing from the 1st of November instant to the 1st of November 1714 years, being £3 Sterling quarterly, beginning the first quarter's payment thereof at and against the 1st day of February next to come, and so forth quarterly," &c. Macdonald, the present collector, brought a process against Taynish, for payment of £5, 10s. as the balance of two quarters resting by his grandfather, and for interest.

Pleaded for Taynish the defender, No action can be sustained upon this bond, *1mo*, Because, by statute 39th of the 33d year of Henry VIII. all obligations taken to the King are to be made in those words, *Domino Regi, et solvend. eidem Domino Regi*; whereas the bond in question, which is for excise-duties, is taken to another person, and does not so much as bear to be for the use of his Majesty: *2do*, Because the bond is absolutely unintelligible, and cannot be the foundation of any judgment.

Answered for the pursuer, The defence upon the English statute was over-ruled by the Lord Ordinary in August 1754, and his judgment is now final. But besides, the defence is not good. The statute enacts, That all obligations shall be taken in these words; but it does by no means annul those that are taken in different terms. The only penalty is, that persons who take such obligations in other words may be imprisoned; but the obligation is still effectual. Agreeable to this it was decided 27th November 1735, Commissioners of Excise against Mitchell of Pittheadie. (See Appendix.) Though the bond is inaccurately wrote, yet it may be understood; and is explained from the excise-books, which demonstrate,