

does it mention that it was signed in their presence. The enactments establishing the legal solemnities in the execution of writings of importance, declare all informal deeds null and void; and this without any exception whatever, even where it cannot be disputed that the subscription is genuine, either from the express acknowledgment of the party, or in consequence of unquestionable evidence proving the subscription; nor is it confined to writings applicable to heritable rights, or to such cases where writing is essential; the enactments contained no such limitation. It is competent, no doubt to refer to the usual proof of an agreement of this sort, the oath of the party; but then this reference must be regulated by the rules of law applicable to this species of proof.

The decisions of the Court, in similar cases, have been various; and it will be material to have the point settled; Sir Archibald Edmonstone against Lang, 23d June 1786, No. 335. p. 17057. Wallace against Wallace 25th November 1782, No. 333. p. 17056. Chrington against Dow, 21st July 1772, No. 328. p. 17047. Russel against Paisley 17th December 1766, No. 138. p. 16904. M'Farlane against Grieve, 22d May 1790, No. 336. p. 17057.; and the decisions there referred to were decided on the principal, That the acknowledgment of subscription is not sufficient to supply the want of the statutory solemnities of deeds. The opposite doctrine is supported by Crawford against Wight, 16th January 1739, No. 229. p. 16979. and Foggo against Milliken, No. 231. p. 16979. which appear to have been wrong decided. Brown against Campbell, 28th November 1794, No. 337. p. 17058. does not apply to this case, as one of the reasons was, that a *rei interventus* barred all objections to the informality of the writing. Sinclair against Sinclair, 3d February 1796, (mentioned in a note under the case of Brown) was a case of a similar kind.

The Court refused the petition without answers.

Lord Ordinary, *Meadowbank*,

For Petitioners, *Campbell*.
Clerk, *Menzies*.

Agent, *Alex. Young, W. S.*

Fac. Coll. No. 74. p. 168.

1805. February 27.

TRAIL against TRAIL.

A minister having subscribed a testament with the testator's name instead of his own, on being required to do so by a person who could not write, the testament was sustained, upon the minister attesting the fact in the character of a notary.

Fac. Coll.

* * This case is No. 33. p. 15955. *voce* TESTAMENT.

* * See Div. 1. Sect. 5. *voce* BILL OF EXCHANGE.

No. 341.

No. 342.