

No. 6. Afterward, upon advising a representation, with answers, his Lordship (16th Jan. 1807) pronounced the following interlocutor: ‘ Finds, That by a trust-deed, duly executed with all the solemnities of law, the late Mrs. Houston vested her whole property in trustees, for certain uses therein declared: Finds, That this deed reserved the power of alteration, and provided, that the trustees should hold any additional directions she might give them as to the disposal of her property, by a writing under her hand, as a part of the trust-deed: Finds, That upon the 13th June 1805, Mrs. Houston so far altered her original settlement as to appoint her niece Miss Agnes Lewis her sole residuary legatee, and that this codicil was duly executed, but that the separate codicil upon which the representer founds is not holograph, and is destitute of date, writer’s name, and subscription of witnesses, so cannot be set up as an alteration of the former regular settlement; refuses the desire of the representation, and adheres to the former interlocutor.’

Miss Dundas presented a petition, which was, by a great majority, refused, without answers, upon the grounds stated in the interlocutor of the Lord Ordinary.

Lord Ordinary, *Hermann*. For Petitioner, *Cathop*. Agent, *A. Duncan*, W. S.
Clerk, *Walker*.

J.

Fac. Coll. No. 278. p. 627.

1807. *December 12.*

PETER and CATHARINE SWANY, *against* BANK of SCOTLAND.

No. 7.

Proof by the testimony of the instrumentary witnesses to a deed, that, they did not see the granter subscribe, nor hear him acknowledge his subscription, is competent to be allowed before answer.

PETER and CATHERINE SWANY, representatives of Patrick Swany merchant in Thurso, brought a reduction of a bond of caution, granted to the Bank of Scotland for Alexander Paterson, bank agent at Thurso, and subscribed by the said Patrick Swany. The averment on which the pursuers founded was, that neither of the two instrumentary witnesses in the bond saw Patrick Swany subscribe, or heard him acknowledge his subscription; and of this they craved a proof by the testimony of these witnesses. The Lord Ordinary allowed the proof before answers; and, on a reclaiming petition and answers, the Court ‘adhered to this interlocutor.’

The case of Franks against Franks, 9th July 1793; No. 30. p. 16822. was considered by the Court as fixing the law, that such evidence was competent whether it might or might not be sufficient to establish the fact averred.

Lord Ordinary, *Robertson*. Act. *F. Jeffrey*. Alt. *Ad. Gillies*.
Agents. *Geo. Napier*, W. S. and *James Ferguson*, W. S. *Ferrier*, Clerk.

M.

Fac. Coll. No. 18. p. 49.