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der it sufficient to undo such a solemn instrument; to me it appears extremely unadvisable, on the evidence of non-recollection, to impeach such a document. But if you, from better knowledge of business, and habit of judging of testimony, are of a different opinion, you will find so.

Verdict—"Find on the first issue for the "defender, that the bill was regularly protest- "ed."

Moncreiff and *More*, for the Pursuers.
G. J. Bell and *Jeffrey*, for the Defender.
(*Macmillan & Grant*, W. S. and *James Donaldson*, S. S. C.)

PRESENT,

LORD CHIEF COMMISSIONER.

HALLIDAY v. RULE.

1822 July 16.

THIS was a suspension, turned into a reduction, of a charge upon a bill of exchange, upon an allegation of forgery.

The pursuer having promised to pay a bill, which, in the opinion of engravers, was not subscribed by him, the Jury found for the defender.

ISSUES.

"Whether the name of John Halliday, sub-

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" scribed to the bill of exchange in process, " bearing to be for the sum of L. 100 Ster- " ling, dated Dumfries, October 6, 1819, " drawn by Thomas Rule, and addressed to " John Halliday in Dam, is the true and ge- " nuine subscription of John Halliday in Dam, " the pursuer?—Or, Whether, on Wednesday " the day of October 1819, at the office " of the Galloway Bank, at Dumfries, the said " John Halliday did say to the charger, or to " Mr Kemp, agent for the said bank, of which " bank the charger is assignee, that the said " bill was all right and correct; or did use " words importing that the said John Halliday " had signed said bill as acceptor?" *

A law agent examined to certain facts, there being a *penuria testium*.

Scott *v.* Caverhill, Dec. 19, 1786, M. 16779.

When the first witness was called,

Jeffrey objects, He is and has been the country agent in this cause. An agent is only good where there is *penuria testium*, and where the fact occurred before the agency. Elliot's and other cases.

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* This case was returned to the Court of Session, there being a doubt how far, under the form of the action, it was competent to prove a promise to pay the bill. The case was afterwards retransmitted with a draft of an issue approved by the Lord Ordinary.

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M'Alpin v. M'Alpin, Dec. 2, 1806, M. App. Wit.

Cockburn.—He has been the agent, but he is good to one fact; to prove the subscription of the pursuer in a paper containing articles of roup.

LORD CHIEF COMMISSIONER.—It is clear that there is a rule against receiving an agent as a witness, but it is equally clear, that there are exceptions to that rule, and *penuria testium* is one of these exceptions. It is said that rule cannot apply to this case, as the fact occurred at a public roup, but though there may have been a hundred people present, there may have only been one looking at the writer.

On another principle, I think it admissible, viz. that he acquired his knowledge of the fact at a time previous to his agency, and when there could be no gloss given to it, and that he is now upon oath. In all cases I am disposed to admit rather than reject evidence.

Comparatio literarum by engravers, competent evidence.

When Mr Lizars, an engraver, was called to prove the subscription forged,

Jeffrey.—This is no doubt competent in certain circumstances, but not where it is rested on as the only proof of forgery.

Cockburn.—There is nothing more certain than that this is competent.

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LORD CHIEF COMMISSIONER.—What I said in a former case was, that it was very satisfactory to have the case founded on the oath of persons acquainted with the handwriting. We know handwriting much in the same manner as an acquaintance, by the general appearance, not by every minute line in his face. If I had been to follow the light of my own mind, I would have taken a different course, and rejected the evidence, but it is now too late. By the law of Scotland, the objection goes to the conclusiveness of the evidence, not its admissibility.

Mr Cockburn opened the case for the pursuer, and Mr Jeffrey for the defender; and after the evidence for the defender, Mr Cockburn declined making any reply.

LORD CHIEF COMMISSIONER.—The evidence now given is a complete refutation of the scientific evidence. This appears to be an abominable fraud, and you will find for the defender. Mr Cockburn gives up the case, and the party having acknowledged the bill, all the engravers could say would not alter the case.

Verdict—" For the defender, Thomas Rule."

BRYDON v. BRYDON'S EXECUTORS.

Cockburn, for the Pursuer.
Jeffrey and , for the Defender.
(Agents, *Alex. Blair*, W. S. and *Johnston & Little*, S. S. C.)

PRESENT,

LORD CHIEF COMMISSIONER.

BRYDON v. BRYDON'S EXECUTORS.

1822. July 17.

REDUCTION of a codicil.

Found, that a person was of a sound and disposing mind, and that it did not appear that a codicil had been drawn out without instructions, &c.

ISSUES.

" Whether, on the 14th day of November " 1818, at the date of the codicil under reduc- " tion, alleged to have been executed by the " deceased Robert Brydon, formerly at Green- " end, in favour of the defenders, the said Ro- " bert Brydon was not of a sound and dis- " posing mind, and was incapable of under- " standing his affairs?

" Whether the said codicil was prepared and " drawn out without instructions from the said " Robert Brydon?

" Whether the said codicil was not read over