

contrary; for if he was, the easy designation had not been omitted. One letter might perhaps have done it, without repeating the whole designation, and yet it falls out in this case, that a single letter may have that import as to make the bond either stand or fall. No. 156.

The Lords found, that the witnesses were not sufficiently designed; and therefore that the bond was null.

For Lanerk, *Dalserf.*

Alt. *Sir Wal. Pringle.*

Clerk, *Gibson.*

Bruce, p. 1.

SECT. VI.

Other Requisites.

1621. *December 11.* HAMILTON *against* SINCLAIR.

William Hamilton sometimes of Samuelstoun, having given his bond to Sinclair his mother, for payment of a certain yearly duty to her, so soon as he gets possession of the teinds of Swinton; whereupon he being pursued for payment thereof to her, compares and excepts, that the bond is null, because it wanted a date, viz. day, month, and year, and therefore could not produce any effectual action. The Lords repelled the allegiance, because the pursuer offered to prove by the witnesses inserted, the date and time of the subscribing thereof; and that the bond obliged the defender to make payment, how soon he became in possession of the teinds, whereas the pursuer offered to prove in his summons, that the defender became in possession thereof, before the years acclaimed from him by the pursuer in that pursuit.

Clerk, *Hay.*

Durie, p. 5.

* * The like found 15th January, 1662, Grant *against* Grant, No. 176. p. 11497.
voce PRESUMPTION.

1625. *July 22.*

A. against B.

The Lords found a tack of the teinds of Fintry null, because it was written *in substantialibus* five years for three years; and sicklike a sasine null, because it was

No. 157.

A bond sustained wanting a date, having a term of payment.

See No. 169. *infra.*

No. 158.

No. 158. raised *in substantialibus* and suspect, viz. the subscription of the notary in his name and surname.

Kerse MS. f. 70.

No. 159.

1625. *July 22.*

CARMICHAEL *against* LOTHIAN.

In an action pursued by John Carmichael of Meadowflat against Lord Lothian, as heir to Mark Lord Newbottle his father, the Lords declared they would not sustain any summons, whereby he desired to fill up a blank precept with date and witnesses after the Lord Newbottle's decease.

Kerse MS. f. 70.

No. 160.

1627. *November 16.*

GILBERT KIRKWOOD *against* JOHN INGLIS.

A practick was produced, where holographon is ordained to be proved by witnesses that saw the body of the writ all written by the party deceased. This practick was used in a cause pursued by Wauchope against Arnot, which the Lords decided by submission.

Auchinleck MS. p. 256.

No. 161.

A missive without witnesses does not prove its date.

1629. *February 12.*

LESLY *against* LAIRD of PITCAPLE.

The Laird of Balquhan obtained from the Lord of Lindores a tack of his teind, with a provision contained in his tack, that if the said Laird should happen to dis-pone the said land without consent of the Laird of Lindores, the tack should be null. The said Lord makes the Laird Lesly assignee to the said clause irritant, and to the contract made thereanent, as also lets him a new tack of the said teind. Lesly pursues the Laird of Pitcaple, who had bought the said land, and Balquhan the author thereof, to hear and see a declarator conform to the irritant clause. It is excepted by Balquhan, that he obtained my Lord's consent by his missive letters, which the pursuer alleged was not relevant, because a missive letter might have been sent by my Lord and antedated, and seeing it contained no witnesses, could not prove the consent. It was answered, that it should be referred to the pursuer's oath, that the letter was written and subscribed by my Lord. The Lords found the exception founded upon the missive letter relevant.

Auchinleck MS. p. 257.