

No. 285.

signation of the writer, otherwise the same to make no faith in judgment or out-with." It is not extremely clear what is intended here, whether that the omission of the writer's name and designation should make the deed *ipso jure* null, so as to deny action upon it, or if it should only furnish an exception to the defender; if the first, the writ is no better than blank paper, and consequently not capable of support by homologation or otherwise; if the last, the exception must resolve into this, That the deed is not a full legal proof, which of course leads the pursuer to support the deed by making a proof who was the writer, or by alleging that the defender has acknowledged the deed and homologated the same, which must bar him from making any objection to its veracity. Our Judges have interpreted the act in the last sense; and therefore, in a question upon this act, the omission of the designation of the writer was allowed to be supplied by condescending upon the same.

Fol. Dic. v. 2. p. 549.

No. 286.

1630. March 19. HARPER against JAFFRAY.

Harper, procurator for a Frenchman, pursues John Jaffray in Aberdour for payment of certain franks, whereupon the said Jaffray had got a bond alleged subscribed, and written with his own hand, without witnesses. It was replied, that the bond was subscribed by the defender, and that it was sufficient, according to the custom of Normandy, betwixt merchant and merchant, to give such bonds, and the same was sustained before the judges of that province; which reply the Lords found relevant. *2do*, The defender denied the subscription to be his, and seeing the bond wanted witnesses, the pursuer ought to prove the subscription of the bonds to be his. The Lords repelled the subscription, and ordained the defender to improve.

Auchinleck MS. p. 146.

No. 287.

1630. December 10. NISBET against NEWLANDS.

A contract of marriage subscribed only by one notary before witnesses, is not challengeable upon that head, either by the husband or wife or their representatives, provided marriage have followed upon it, because the marriage is an act of homologation, which bars them from making the objection.

Stair.

* * * This case is No. 59. p. 5682. *voce* HOMOLOGATION.