

1684. *February.* MR THOMAS ALLAN *against* MR HUGH BLAIR.

A BOND of 2000 merks being reduced and improven upon this ground, That one of the witnesses insert deponed, that he subscribed it in a room where the principal was present, (without seeing him subscribe, or hearing him acknowledge that he had subscribed the bond,) upon the other witness's assertion that the principal had subscribed; and the other witness, who was a notary, deponed, that the one half of the subscription was the principal's and the other half his own: the creditor in the bond raised a process for damages against the witnesses. Alleged for the defenders, That such an action is a novelty; and witnesses, before the late Act of Parliament, did usually subscribe *witness*, though they did not see the principal subscribe. Answered for the pursuers, That if such witnesses were not made liable in damages, people's security would be in great danger; for, seeing parties cannot always be present when he, their debtor, subscribes, the creditor rests upon the faith of the witnesses, as to the debtor's subscribing; and they ought not, by their subscribing, to induce the creditor to believe that the bond was true and valid, unless they had seen the debtor subscribe, or that he had acknowledged so much to them when they subscribed; and the late Act of Parliament has considered persons signing *witness* to another's subscription, without seeing the other subscribe, as a fault so great, and of so dangerous consequence, that it hath made it *species falsi*. The Lords, *ne-mine contradicente*, found the witnesses liable, conjunctly and severally, to the pursuer's damage, effeiring to the principal sum and annual-rent which he would have had by the bond if rightly witnessed.—*February* 1684. Which decision was thereafter adhered to by a new interlocutor. The like will follow, if notaries subscribing deny the party's warrant.—*Castlehill's Pratt. tit. Improbation and Reduction, No. 92.*

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1684. *February.* SIR PATRICK HUME *against* HUME of LINTHILL, &c.

SIR Patrick Hume, claiming right to fix a dam-head upon a piece of land belonging to Linthill and others, in community, as prescribed by the possession of those persons who pretended [right] to the property of a mill belonging to the pursuer;—Alleged for the defender, The pursuer cannot found upon the possession of the defender and his authors, by virtue of rights reduced by the pursuer, seeing he derives no right from them, but from others having better right: and whatever might be pretended for the pursuer's right, to make use of the defender's and his author's possession, in order to prescribe against third parties, that cannot be obtruded in prejudice of the defender's rights of other lands, seeing he and his authors cannot be said to have been negligent; which is the reason for prescription. Answered, Though the distinction may hold in personal servitudes, yet real servitudes, *quæ acquiruntur fundo*, accresce and pertain to those having right to the land. Now the servitude in question is a real one: and as, if the defender and his authors had built the mill upon the land, it would have belonged to the pursuer; so the right to the dam must belong to him, whether constituted