

SECT. V.

What Designation sufficient?

1672. February 21. BAILIE of Littlegill *against* SOMERVEL.

In a competition between Baillie arrester, and Somervel assignee, having a prior intimation, which Baillie offered to improve, wherein there was but only two witnesses, the one designed William Wood indweller in Edinburgh; whereanent it was alleged that he ought to be more particularly designed, because it was not constant that ever there was such a person, and the designation was so general, that by no inquiry it could be found, unless all the indwellers in Edinburgh at that time were examined; it was answered, That the act of Parliament anent the designation of witnesses requires no further, and so the party was not obliged by any law to condescend further.

The Lords found that the assignee ought to condescend more particularly, that the witnesses might be found and known.

Stair, v. 2. p. 75.

No. 147.

In an impro-
bation of an
execution in
which one of
the witnesses
was designed
indweller in
Edinburgh,
a particular
condescend-
ence of the
designations
of the wit-
nesses, was
ordered to be
given in.

1698. November 29.

GRANT, Wright in the Canongate, *against* CAPTAIN KEIR.

This was a reduction of a disposition made by Grant's wife, of some land at Mus-
selburgh to the Captain, before her marriage to Grant, who suspected the right
was antedated to defraud him, but being unwilling to venture it on the oaths of
such witnesses, he first insisted on this reason, that the disposition was null, be-
cause, it having only two witnesses, one of them called Robert Rollo is only
designed indweller in Edinburgh, which is not sufficient now, since the 5th act of
Parliament in the year 1681; for there being so many inhabitants in Edinburgh,
and sundry of the same name, they might as well design one indweller in such a
shire, the intent of the law being to know witnesses in case falsehood were ob-
jected, as appears from act 80, 1579, and act 179, 1593; and from *Stair, Title,
REDUCTIONS AND IMPROBATIONS; 3d. February, 1665, Falconer, No. 107.
p. 16883; 21st February, 1672, Baillie, No. 147. supra; 22d February, 1676,
Innes, Sect. 11. h. t.; and 21st July, 1680, The Comprisers of Enoch, No. 3. p. 183.*

No. 148.

Similar to
the above.

No. 148. Answered, The act of Parliament 1681 requires indeed that witnesses be designed, but determines nothing what designation shall be sufficient, and what not, and "indweller in Edinburgh" is as good as writer, and it has never been controverted; and if this were sustained as a nullity, it would reverse and endanger hundreds of bonds and other securities. It is true, if they offer to improve the subscription as false, then they may be put to condescend if there be more of the same name in Edinburgh, to design which of them it is; but it can never import a nullity; see 7th February, 1672, Stuart of Kettleston against Kirkhill, No. 564. p. 12654. and Sir George M'Kenzie's Observes on the foresaid acts of Parliament. The Lords repelled it as a nullity, but thought if the pursuer insisted for it, the defender would be obliged to condescend if the said Rollo was dead or alive, and to distinguish him so as to be known from others of that name, seeing the party's subscription was not denied, but was only suspected to be antedated, to prejudice the husband of his *jus mariti*.

Thereafter, Mr. Grant insisting on the improbation of the disposition *quoad datam*, the Lords ordained Keir to condescend and design this Rollo, the witness, more specially than he is by the writ.

Fountainhall, v. 2. p. 20.

1706. February 15.

ALEXANDER DUNCAN of Strathmartin, *against* JOHN SCRIMZEOUR of Kirkcoun.

No. 149.

A bond run thus, "I have subscribed these presents, written by George Henderson at Auchterhouse the 11th December, &c."

The place named was held to supply the designation of the writer, as well as to denote *where* signed.

Wintoun of Strathmartin having granted bond for 600 merks to William Nicol, hammerman in Lundie, docquetted thus, "I have subscribed thir presents, written by George Henderson at Auchterhouse this eleventh day of December 1685 years, before thir witnesses, Abraham Nicol, hammerman in Auchterhouse, Patrick Henderson, eldest lawful son to the said George Henderson writer hereof, and the said George Henderson." Alexander Duncan pursued reduction thereof against John Scrimzeour upon this ground, That the bond is null as wanting the writer's designation; and one of the witnesses is only designed, Patrick being designed by his father who is not designed.

Alleged for the defender: These words, "At Auchterhouse" are rather to be understood as the designation of the writer, than of the place of subscribing, seeing the not mentioning the place is no nullity, and interpretation is so to be made, *ut actus potius valeat, quam pereat*; unless we say that a country clerk did think it a piece of eloquence to express the place of subscription and his own designation in one word; *2do*, Patrick Henderson is designed eldest lawful son to George Henderson the writer, and the said George is designed father to Patrick; and both the Hendersons lived at Auchterhouse.

Answered for the pursuer: The writer cannot be understood as designed by the place of subscribing, because the bond bears to be written by George Henderson *at*, and not *in* Auchterhouse; and then the mention of the place of subscribing