

No. 165. on these evidences, that it bears “ to be granted *in anno* 1632, without annual-rent, and that nothing followed thereupon till now, that the writer and all the witnesses insert are dead ; and that by comparison with a contract of the same date, and betwixt the same parties, the same writer and witnesses, it is evident that the hand-writing of the body, and all the subscriptions, are palpably different, and that the subscriptions of the parties and witnesses in this bond do clearly appear to be one hand-writing ;” so that it appears this hath been a copy.

And yet the Lords, for clearing the matter before answer, took the Earl of Weems’ oath, who denied the subscription, or the granting of this bond ; but the Lords considering that this bond was made use of by the pursuer, having found it amongst her husband’s writs, though she abode by that, yet it should import no criminal effect against her.

Stair, v. 2. p. 362.

No. 166. 1709. *July 14.* VALLANCE *against* M'DOWALL.

The Lords refused to find a writ null, upon this ground, that it mentioned not the place where it was granted.

Forbes.

* * This case is No. 54. p. 5850. *voce* HUSBAND AND WIFE.

* * The same found in the case of Ogilvie against Baillie, mentioned below.

No. 167. 1711. *February 21.* OGILVIE *against* BAILLIE.

A declaration sustained, though wanting a date:

Forbes.

* * This case is No. 123. p. 16896.

No. 168. 1712. *February 5.*
MARGARET, ELIZABETH, ANN, and ISOBEL ELIESES, Daughters to the deceased
Mr. James Elies of Stenhouse-mill, *against* JAMES WATSON of Saughton, and
His CURATORS.

Holograph,
receipts need
not witnesses
to prove their
dates.

In the count and reckoning at the instance of the daughters of the deceased Mr. James Elies, against James Watson of Saughtoun, as representing his father, men-

tioned No. 24. p. 14041. the Lords sustained holograph receipts wanting witnesses granted by Mr. James Elies, to extinguish *pro tanto* a bond granted to him, his heirs and assignees, secluding executors, by the defender's father; albeit the bond was heritably conceived, and the receipts not proving their date, were presumed to have been granted on death-bed; because, though one be restrained from conveying an heritable debt on death-bed in prejudice of his heir, he may take payment thereof on death-bed, and so dissolve the obligation, he could not transmit by assignation.

Forbes, p. 583.

No. 168.

1712 July 1.

ALEXANDER M'ILDOWNIE *against* JOHN GRAHAM of Dougalstoun.

Dougalstoun alleged, that the bond which is the foundation of M'ildownie's process against him is null, *1mo*, As wanting a date; *2do*, For that it doth not bear to be subscribed before witnesses, but only written before witnesses: The Lords repelled both these nullities, in respect it was answered for the pursuer; *1mo*, The bond is payable at three several terms in the years of God therein-mentioned, which sufficiently supplies the want of a date at the end. So 15th January 1662, Grant against Grant, No. 176. p. 11497. the Lords found a bond not null for wanting a date as to the day, month, and year, seeing it bore annualrent from a certain time in such a year last past, which supplied the date as to the year; *2do*, It is frivolous to object, that the bond bears only to be written before witnesses, and not that it was subscribed before them, seeing the bond bears to be subscribed by notaries for the granter, who could not write, before four witnesses. And it can be no just ground of exception against this bond, that the words, "I have subscribed these presents," are wanting, seeing the granter could not subscribe.

Forbes, p. 605.

No. 169.
In conformity
with No. 157.
p. 16925.

* * * Fountainhall reports this case :

One Manasses Lyle being debtor to Mackildownie in 350 merks by bond, and having disposed his effects to Dougalston, and a competition arising, it was objected against Mackildownie's bond, that it is null, as wanting a date. Answered, It is very true, being drawn by an ignorant country fellow; yet it was sufficiently supplied by expressing the year of God in the term of payment, "at Martinmas 1679;" so it has been dated about Whitsunday 1679; and this has been sustained by the Lords to support the want of a date, 15th January 1662, Grant against Grant, No. 176. p. 11497. Answered, The date is *de essentiali* of a writ, and cannot be made up by illatives and equipollences. The Lords repelled the nullity, and sustained the bond, being *in re antiqua*.

Fountainhall, v. 2. p. 748.