The Lords varied in their judgments, but on the last proof found the subscription void. No. 23.

Act. *Boswell et Hamilton Gordon.* Alt. *Miller et Swinton.* Clerk, *Kirkpatrick.*

D. Falconer, v. 2. No. 168. p. 198.

1751. *Jan.* 9. FALCONER *against* ARBUTHNOT and Others.

No. 24.
Subscription of a blind person not sustained.

Several bonds granted by the Lady Phesdo to Arbuthnot of Fordoun and others her grandchildren, having her subscription adhibited to them, after she was so blind with age that she could not see to subscribe, and where it was proved that Fordoun led her hand when she adhibited her subscription, were upon that ground reduced; notwithstanding the deeds appeared rational, and that some evidence was brought of her previous intention to give some donations to her grandchildren.

At pronouncing this interlocutor, the Lords were nowise moved by the arguments brought by the pursuer to prove an imposition, but they thought there was the utmost danger in sustaining deeds in those circumstances. They also thought that L. 8. C. Qui test. facere possunt, was founded on solid principles; that therefore a person blind, or so blind as the Lady was, could not legally sign but by notaries, and that a publication of her will *coram tabellione et testibus* was necessary, for the reason given in fine, D. L. 8. That whatever reasons there might be to think there was no imposition in this case, yet the law suspected and even presumed it. That farther, one's subscribing, by having his hand led, is illegal, dangerous to sustain in any case, especially so in this.

Kilkerran, No. 20. p. 616.

1752. *December* 7. STEPHEN BROOMFIELD *against* JOHN YOUNG.

No. 25.

In an action for implement of a minute of tack pursued by Broomfield, Young the tenant objected, that the minute was null, for that it did not bear that the marginal notes had been signed before witnesses; the words of the testing clause being, "Before these witness, Robert Brown tenant [in] Ednam, and John Fish of Castlelaw, writer hereof, and witness to the marginal notes also." Now, since "writer hereof, and witness to the marginal notes also," cannotbe applied to Brown, Fish must, in all propriety of speech, be held to be the single witness to the subscription of the marginal notes; which therefore can bear no faith in judgment; and consequently that mutual contract, whereof they are a part, must also be null.

Answered for Broomfield: The writer of the deed imagined that the word *witness* might be used in the plural number, as appears from the testing clause above recited; and this explication being once admitted, the marginal notes will seem properly attested.

No. 25. "The Lords repelled the objection."

Act. *G. Pringle.* Alt. *A. Pringle.* Reporter, *Kilkerran.*

D. *Fac. Coll. No. 43. p. 64.*

1759. *February* 9. DUNBAR *against* INNES.

No. 26. The testing of a mutual contract bore these words, "In witness whereof these are written by A. B. servitor to the Laird of B. and subscribed by *my* hand at Edinburgh," &c. The deed was signed by both parties. It was objected, that the word *my* did not apply particularly to either of the parties' subscriptions, and could not apply to both; which was urged as a nullity in the deed. The Lords repelled the objection.

Fac. Coll.

*** This case is No. 315. p. 11644. *voce* PRESUMPTION.

1760. *November* 19. SHEPHERD *against* INNES.

No. 27. A woman sued a reduction of some bills accepted by herself upon this ground *inter alia* that they were signed by initials, which was not her ordinary way of subscribing. The Lords repelled the reason, as the pursuer did not deny that the initials were of her hand writing.

Fac. Coll.

*** This case is No. 8. p. 589. *voce* APPRENTICE.

1765. *June* 21. Sir THOMAS GORDON *against* JAMES MURRAY of Broughton.

No. 28. Not bearing in the testing clause to be subscribed by the granter.—Subscribed without his Christian name.—Notorial docquets.

Nathaniel Gordon served heir male and of provision in general, to the estate of Carleton, with a reference to the clauses of the entail, and disponed the lands to Alexander his son in fee simple.

Alexander Gordon sold the estate by minute of sale to Alexander Murray of Broughton, who led an adjudication in implement, and also in security of sundry debts, on which he was infeft.

Sir Thomas Gordon of Earlston, the next substitute to Alexander, pursued a declarator of irritancy, for having it declared that Nathaniel and Alexander Gordons had irritated their rights, for themselvs and their descendents.

Compearance was made for James Murray, now of Broughton, who pleaded, *inter alia*, that Nathaniel Gordon had right to the estate, independent of the tailzie, by expired adjudications.