

writ. The nullity against the seazine was,—that it contained three witnesses, and only one of them was designed; in so far as it bore Thomas Miller, and James ———, servitor to Pyeston. Now Miller had no designation, and James ———, who is called servitor to Pyeston, had no surname, and so *habetur pro nullo et non adjecto*. The Lords thought this nullity yet suppliable *quoad* Thomas Miller, (being before the Act of Parliament 1681.) But the question occurred to the Lords,—What if he designed a dead man? the mean of improbation *comparatione literarum*, or otherwise, was perished, seeing witnesses in seazines did not then subscribe. Others thought it alike, *in re antiqua*, whether the party designed was dead or alive; but the Lords, before they would determine whether it was suppliable or not, desired to see the decisions, how the current had hitherto run in such cases. See 7th February 1672, *Stuart* against *Kirkhill*.

The Lords, at last, thought it of dangerous consequence to allow the designation of dead witnesses, where they are not subscribing. Yet here, before answer, they allowed a proof to either party; the one to prove that Miller was then Pyeston's servant, and the other, that he was tenant in Hilton, conform to the designation given him, in another charter, of a creditor on the same estate. See 15th July 1664, *Cokil*; 24th January 1668, *Magistrates of ———* against *Earl Finlater*.
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1697. January 19. CARMICHEL of BONYNGTON against WILLIAM BAILLIE of LAMINGTON.

I ALSO reported Carmichel of Bonyngton against William Baillie of Lamington; who, being charged on his bond of corroboration, suspended, that he ought to have an assignation to the first original bond granted by his curators, because it proceeded on a narrative that it was borrowed to pay a debt of his grandfather's to Mr Watson, which debt cannot be made appear; and he consigned it on that condition in Mr William Hamilton's hands, then Bonyngton's factor; which he offered to prove by his oath, or by his accounts given in to Bonyngton.

ANSWERED,—No such probation can be taken against his bond; neither can he be obliged to assign in prejudice of those whom Lamington is bound to relieve.

The Lords found Bonyngton had no prejudice to assign; and reserved all Lamington's curators' defences against him, when he should insist on the assignation.
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1697. January 20. THOMAS FOTHERINGHAM of POWRIE against SIR JAMES OSWALD and CHARLES MURRAY of HALDEN.

PHESDO reported Thomas Fotheringham of Powrie, against Sir James Oswald and Charles Murray of Halden, for holding count to him for the price of 300