

1713. *January 28.*

MARGARET SCOT LADY HACKSHAW *against* The DUCHESS of BUCCLEUGH.

No. 314.

The writer of a bond before 1681 being designed servant to a person not designed, a condescendence on the designation of the undesigned person, as- tructed by an assignation from the creditor in the bond where- in one of that name was so designed, was sustained as sufficient to supply the defect.

In the action at the instance of the Lady Hackshaw against the Duchess of Buccleugh, as representing Walter Earl of Buccleugh, for relief of the half of the sum of £1000, with annualrent and penalty, contained originally in a bond granted to Sir William Dick by Captain William Scot as principal, and the said Earl and John Scot of Sintoun as joint cautioners ; the defender pleaded, that the bond is null, because the writer is designed only Francis Dick servant to Andrew Creich. The pursuer condescended, that Andrew Creich to whom the writer of the bond is designed servant, was a merchant in Edinburgh ; and for astructing the same, founded on the assignation granted by Sir William Dick of the foresaid bond in favours of Sir John Scot, to which one of the witnesses is Mr. Andrew Creich, son to Andrew Creich merchant in Edinburgh.

The Lords sustained the condescendence upon Andrew Creich's designation, as sufficient to supply the nullity, and duly instructed by the aforesaid assignation produced :

Abeit it was alleged for the defender, That though the Lords have been in use to allow the supplying of such a nullity by a condescendence upon a living writer duly instructed ; yet, when the writer is dead, a condescendence upon his designation was never sustained without writs and adminicles, and whereby his hand-writ and subscription might be known and compared, 1676 February 22, Innes against Gordon, No. 143. p. 12056. to answer the design of law, that falsehood may be prevented, and the means of improbation, direct or indirect, left entire. The borrowing the designation of the writer or his master from another writ, amounts to no more, than that the designation given might have been true. And if that were sufficient, no writ could ever be annulled for want of the designation of writer or witnesses ; it being easy to condescend upon a designation, and to prove by another writ the possibility of the designation's being true, from the existence of persons so named and designed :

In respect it was answered, *1mo*, It is a matter whether the designation be inserted in the body of the writ, or supplied by a condescendence ; seeing both the writ and condescendence are equally liable to the objection of falsehood ; *2do*, The pursuer is in a more favourable case, than if the writer of the bond were not at all designed, or his name inserted and no more ; for here the writer is designed a servant which distinguishes him from all others not of that rank : and farther is designed servant to Andrew Creich, which distinguishes him from all servants to any other not of that name, and from all the world, except there were more Andrew Creichs than one ; and the condescendence was only to make that designation more special.