common law power, it would have been in different terms; it would have been in terms similar to those of the clause applicable to the Admiral deputation,—'If the Sheriff-depute shall appoint a substitute'—and as the act requires him to do so.—'When the Sheriff shall appoint, be 'it enacted, that the substitute appointed shall' do and enjoy certain things. These are the grounds on which, independently of the construction of the charter, (though I think the construction aids my proposition,) and purposely leaving out of view altogether the power of the Crown to grant such charters, I am led to the conclusion, that the judgment must be affirmed. Upon the ground that the Court is a new one, not in existence at the date of the former grants; and on the construction of the charter of 1780, and on principle, I take leave to advise your Lordships, that the appellants cannot have an exclusive right of practice, and that the several interlocutors of the Court below, repelling the reasons of advocation, were well founded. My Lords, I would therefore move your Lordships that the appeal be dismissed, and the interlocutors affirmed. Nov. 24, 1830.

The House of Lords accordingly ordered and adjudged that the interlocutors complained of be affirmed.

SPOTTISWOODE and ROBERTSON,—RICHARDSON and CONNELL, —Solicitors.

JAMES MORTON, (BROWN'S Trustee,) Appellant.—*Campbell—Jarves.* No. 44.

HUNTERS and Co., Respondents.—*Robertson.*

Sasine.—Right in Security.—Held (affirming the judgment of the Court of Session), 1. That the omission of the Christian name of the Bailie, where his surname and place of residence is given, is no objection to a sasine. 2. That although the Christian name of a witness be written on an erasure in the instrument of sasine, it is no objection to it; and 3. That a sasine proceeding on an heritable bond for a cash credit for L.5000, and three years interest thereon, at the rate of five per cent, is good.

Proof.—Observed, That hearsay evidence and parole testimony, as to the contents of a letter not alleged to be destroyed, ought to be struck out of a proof taken on commission.

The Respondents, Messrs Hunters and Co., bankers in Ayr, having agreed to allow William Brown of Lawhill a cash credit, to the extent of L.5000, he granted an heritable bond and disposition to them for the advances to be made to him, but declaring that 'the whole sums to be recovered, in virtue of the said Nov. 26, 1830.

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Nov. 26, 1830. ‘ bond, shall not exceed the sum of L.5000, and three years ‘ interest thereon at the rate of five per cent, conform to the 14th ‘ section of the act 54 Geo. III. cap. 137,’ and sasine was given under a declaration in the same terms. The instrument set forth that Hugh Brown appeared as attorney for the respondents, and ‘ passed with us and Brown in Dubbs, parish of Steven- ‘ ston, bailie in that part, specially constituted by virtue of the ‘ precept of sasine after inserted.’ In the concluding or testing clause, it was stated that Mathew Brown and another were witnesses to the premises, but the word *Mathew* was written upon an erasure. His subscription, however, was quite correct, and it was not denied that in the record he appeared as one of the witnesses.

Brown having become bankrupt, and his estates having been sequestrated, Morton, the trustee, brought an action of reduction of the instrument of sasine, on the ground, 1. That the omission of the Christian name of the bailie was a fatal objection; but that at all events, at the date of the alleged instrument, there were two places in the parish of Stevenston called Dubbs, in each of which there were various persons of the name of Brown, so that in fact there was no bailie named in the instrument, and it was impossible to discover what person acted as bailie on the occasion of giving the sasine, or whether any bailie was present at all, or any infeftment truly given. 2. That the erasure of the name of the witness was fatal to the instrument; and, 3. That as the amount of the principal sum and interest was not limited to a certain specific definite sum, the security was ineffectual.

In defence, the respondents maintained, 1. That the objection founded on the omission of the Christian name of the bailie was irrelevant, because he was otherwise sufficiently pointed out; that at the date of the instrument of sasine, there was only one farm or dwelling-place called Dubbs in the parish of Stevenston, and there the person who officiated as bailie had his dwelling-place, and they denied that there was any other place of the name of Dubbs in that parish where any person resided, although there was a colliery of that name; or that various persons of the name of Brown resided in Dubbs. 2. That the objection founded on the erasure was irrelevant; and, 3. That the amount of principal was set forth, and although the interest was not specified in so many pounds, it was quite definite and conformable to the statute.

The Lord Ordinary, before answer, allowed the parties a proof of their allegations, relative to the identification of the

bailie. A proof was accordingly led, in the course of which, a witness was permitted to depone as to facts communicated to him by a person still alive, and produceable as a witness; and another was allowed to state the import of a letter without the letter itself being produced. The Lord Ordinary, on advising the proof, ordered Cases, and having reported them to the Court, their Lordships directed the following query to be submitted to the other judges for their opinion, 'Whether 'the omission of the Christian name of the bailie in the 'sasine in question, rendered the said sasine null and void?' Lords Justice-Clerk, Glenlee, Alloway, Pitmilly, Cringletie, Meadowbank, Mackenzie, Medwyn, Corehouse, and Newton, returned the following opinion:—'We have considered the 'revised cases, and have examined the instrument of sasine 'in question, and are of opinion that the omission of the 'Christian name of the bailie in the sasine does not render the 'instrument null and void. The authority to infeft flows from 'the command of the superior, or grantor of the deed, as ex- 'pressed in the precept of sasine. The precept must contain a 'special mandate to this effect, and no general powers, however 'ample, will suffice; but the name of the person to whom this 'mandate is committed is left blank in the precept, and never 'filled up. Any person can execute the precept as bailie. Mr 'Walter Ross thus describes the manner in which this business 'is accomplished: "The first movement is made by the party 'or his attorney, possessor of the charter containing the precept. 'He requires the attendance of a notary-public to certify the 'act. They next, in virtue of the blank left in the precept for 'the bailie, choose a person to fill that office, and get witnesses 'to attest the whole fact."—Ross's Lectures, Vol. ii. p. 178. It 'seems sufficient, therefore, *first*, for validating the act of the 'bailie, that the precept of sasine should be delivered to a par- 'ticular person, no matter whom, different from the attorney 'and witnesses, and handed over by this individual, whoever 'he may be, to the person who acts as attorney, in presence of 'the witnesses, and that after the precept has been read by the 'attorney, the person acting as bailie deliver the symbols; and 'it seems sufficient, *secondly*, for rendering these acts authentic, 'that the notary, in the instrument and docquet, attest them to 'have been done by a certain person officiating as bailie. The 'name of this person must indeed be given, and it is no doubt 'usual and proper to insert the Christian name, as well as sur- 'name; but this does not appear to be indispensable, if it is

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Nov. 26, 1830. ‘ asserted on the face of the instrument, and attested in the ‘ docquet, that a certain person officiated as bailie in giving ‘ seisin, and if this individual is so described that he may be ‘ known and distinguished from others. There is a case re- ‘ ported by Dirleton which illustrates those principles, by pro- ‘ ving that even a mistake committed by the notary, in men- ‘ tioning the name of the person who actually gave seisin as ‘ bailie, and confounding him with the attorney, will not inva- ‘ lidate the infeftment, if it appear from other parts of the seisin ‘ that there were actually two different persons employed, one ‘ as attorney, and the other as bailie:—“ The Lady Cheynes ‘ being infeft in an annual rent upon a right granted by her ‘ husband, her seisin was questioned upon these grounds—1st, ‘ That it was null, in so far as the bailie and the attorney in the ‘ seisin were one person, who could not give and take the seisin,” ‘ &c. “ The Lords, in respect it did appear evidently that it ‘ was a mistake of the notary that the seisin did bear the same ‘ person to be both bailie and attorney in the clause of tradition, ‘ and seeing by the first part of the seisin it was clear that there ‘ was a distinct attorney, who did present the seisin to the ‘ bailie, did therefore incline to sustain the seisin,” &c. In the ‘ present case, a parole proof has been rendered competent and ‘ necessary, because the purpose of it is not to contradict the ‘ written instrument, but to explain an omission in it, and be- ‘ cause one of the reasons of reduction libels, “ that the bailie ‘ is not so designed as to point out the person, or give any in- ‘ formation who the bailie was, there being in the parish of ‘ Stevenston two places called Dubbs,” &c. Now it appears from ‘ the proof, that the person who is said to have acted as bailie, ‘ in giving infeftment, was little known by his Christian name; ‘ but that, in order, in all probability, to distinguish him from ‘ others of the same surname, who lived at no great distance ‘ from him (though not on the same farm, nor in the same pa- ‘ rish), he was generally designated “ Old Brown in Dubbs,” or ‘ “ Old Dubbs,” or “ Brown of Dubbs, in the parish of Steven- ‘ ston,” or “ Brown in Dubbs.”—Defenders’ proof, p. 29, D; ‘ Pursuer’s proof, p. 16, C, &c. It may have been from this ‘ cause, joined to the circumstance of the notary filling up the ‘ blanks at an interval of time (and not having very perfectly ‘ fulfilled the duty, as expressed in these words in his docquet, ‘ *et in notam cepi*), when he only recollected the bailie by the ‘ name which was usually given to him in the country, and ‘ when the Christian name had either slipped from his memory,

'or had never been known to him, that the omission in question Nov. 26, 1830.
'has occurred.' From this opinion Lords President, Craigie, and Gillies dissented, while Lord Balgray concurred. The Court accordingly, on the 10th of December, 1828, repelled the objections to the instrument of sasine, sustained the defences, and assoilzied.*

Morton appealed.

Appellant.—1. An instrument of sasine is an important and esential part of a title, and must be in every respect complete. If slovenliness be permitted, it will be impossible to assign any limit to such a permission. It is therefore necessary to preserve perfect accuracy. In giving sasine, either the superior or his bailie must be present. In the precept the name of the latter is generally left blank; but it is requisite that the name of the particular person who has officiated be set forth in the instrument. It is not enough to state the surname of the bailie, because this no more identifies the individual than if the Christian name without the surname was given. The matter is thus left in uncertainty; besides, the proof shows that there were other persons of the name of Brown who resided in Dubbs, parish of Stevenston.

2. By the Statute 1681, cap. 5, witnesses must be specially named and designed in instruments of sasine; but as the word Mathew is written upon an erasure, it must be held pro non scripto; and consequently, the name being defective, the instrument falls under the sanction of nullity.

3. The words of the statute 54 Geo. III. c. 137, are quite express, 'that the principal and interest which may become due 'upon the said cash accounts or credits, shall be limited to a 'certain definite sum, to be specified in the security,—the said 'definitive sum not exceeding the amount of the principal sum, 'and three years interest thereon at the rate of five per cent.' But the sasine does not specify any definite sum,—it merely declares that the security is given for a sum not to exceed L.5000, and interest. It is not relevant to say that this affords data for specifying the sum. The enactment of the statute is, that the sum shall be specified, and is equally imperative with another section of that statute relative to valuing and deducting securities in claiming on the bankrupt estate, and specifying the ba-

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* 7 Shaw and Dunlop, p. 172.

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lance. It has been held that although the security be valued, and consequently a mere arithmetical operation required to be performed, yet if the balance be not specified, the claim is objectionable.

Respondents.—1. It is not essential in point of solemnity that the Christian name of the bailie be mentioned, if he be otherwise so described and identified as to point out the person who officiated. In the present case the surname, the place of residence, and the parish, are given in the instrument. This is a sufficient specification, and there being no ambiguity on the face of the instrument, extrinsic evidence to the effect of introducing ambiguity was incompetent. The proof, however, clearly establishes that there was only one Brown who resided at Dubbs, in the parish of Stevenston.

2. It is not denied that in point of fact Mathew Brown was a witness at the taking of sasine, nor is it alleged that the erasure was made posterior to the recording, which it could not, because the instrument and the record correspond, and the signature of the witness is unobjectionable.

3. The statute has been sufficiently complied with. It is immaterial whether the sum is set forth as L.5750, being the amount of principal and interest for three years, or whether, as is actually done, the principal sum be specified and the words added, ' with three years interest at five per cent.'

LORD CHANCELLOR.—My Lords, in a case like the present, involving questions upon the law of real property in Scotland, the principles of which, in its origin, bore a near resemblance to, if they were not altogether the same, with those of the English law, although, by lapse of time, they have come to be so widely different, that, in many respects, they may be rather said to be opposite to one another than merely unlike, I should be very slow indeed to take up an opinion, even if I thought I saw ground to maintain it, which went to reverse an advised judgment of those learned persons who adorn the Scottish Bench, after having been for years the ornaments of the Scottish Bar, and practised for years in that branch of the profession which deals with the rights of real property. I should come with the greatest hesitation, and, I may say, even alarm, to any conclusion that might seem to differ from theirs ;—for it is needless to remark, how little we generally learn of foreign law, and foreign systems of jurisprudence, unlike our own, by merely consulting statutes— which have oftentimes an interpretation affixed to them by practice widely different from the apparent and plain meaning of their words,—or by resorting to judicial decisions or the opinions of text-writers, or to the incidental dicta of judges ; for all those sources (and they are the only sources from which the law of any foreign country can be learned) are liable to be

controlled and modified in practice by that which no books can teach, and which can only be learned by being, as it were, incorporated with the profession in whose hands that practice is. This consideration would always be with me a reason for receiving, with great reluctance, impressions contrary to the decisions of the Court from which the appeal is brought, when that Court has deliberately, by a great majority of its Judges, come to a decision upon a question purely of Scottish law. But in this case, the reasons given by those learned Judges in support of the decision, and the arguments which arise out of the case, appear to me, from the best attention I have been able to pay to it, so entirely to go along with the judgment itself, and so amply and decisively to support that judgment, that I feel a double confidence in the proposition which I am about to submit to your Lordships, now to affirm this decision; and, feeling that confidence so strong, I have the less hesitation in presuming to adopt this course, because it saves much time (the time being that of the public) for other causes, which so much crowd the list of appeals. My Lords, I have endeavoured, during the able argument of the learned gentleman who has addressed your Lordships for the appellant, to examine the cases to which he referred, and the authorities he cited, and the reasons which he urged; and I had also, before coming to this House, examined the printed cases on each side, for the purpose of saving your Lordships' time; and I am not enabled to discover any thing like a reason for impeaching the judgment of the Court below. The first question made, and the only question which will admit of any discussion, is the omission of the Christian name of Brown, the bailie, who is called "Brown in Dubbs." And first, it is said, that where the Christian name is omitted, there is a flaw in the instrument, which no evidence dehors that instrument can supply,—that it is fatal to the validity of the instrument, and that it stands as if there were no bailie who is asserted in the instrument to have given sasine. My Lords, the law of Scotland, which was originally the same with respect to the livery of sasine, as our ancient mode of conveyance by feoffment, and livery of seisin, has, in process of time, come to be, in one or two particulars, materially different. With us, if the feoffment is good, and there is an actual livery and seisin of the land, that is sufficient. It is usual, I admit, and all our authorities so put it—they say that it is usually safe and convenient—they never go so far as to say, that it is absolutely and indispensably necessary—that there should be a memorandum of that proceeding, which, when it is made, is either appended to the deed, or indorsed upon the deed of feoffment itself; and it generally purports that seisin has been given in the manner which has been referred to by the learned gentlemen from Scotland, in the same terms as their instrument of sasine, or to the same purport. It uses the word "attorney" instead of "bailie;" but there is no substantial difference. It states, that livery was given of the land by A. B., attorney for the feoffor, to C. D., attorney for the feoffee. That proceeding is usual, and it is convenient, but I apprehend it not to be essential. Whatever it may have been originally, in process of time it has ceased to be

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Nov. 26, 1830. absolutely essential; and there may be a good livery without it;—but, if there be any thing defective in the livery itself; or if there be no livery at all, the feoffment itself would be void as a feoffment, though it might ennure as a covenant to stand seised to uses within the restrictions of proximity of blood, which apply to that mode of conveyance. But in Scotland, I take the law to be different. There the instrument of sasine is essential to the conveyance. There must be a sasine, otherwise the rule of the feudal law applies, nulla sasina nulla terra; but here must also be a constat of that act. There must be an instrument of sasine, and that instrument of sasine is an essential part of the conveyance. The question then is—and here we are upon a question purely of Scotch law, because I have just said the two systems of law, which were alike in their origin, have branched asunder, in the progress of time—namely, Whether the instrument of sasine being thus necessary, the omission of the bailie's Christian name is, or is not, a fatal defect in that instrument, making the conveyance void, as if there had been no instrument of sasine? Now, my Lords, it is agreed on all hands, that there must be clear proof upon the instrument that there was a bailie. There must be no confusion or doubt upon the instrument, taking it altogether, that the bailie and the seisor (that is to say, the person purchasing and taking the investiture of the title by the seisin) were different persons. It must appear, one way or another, upon the face of the instrument, that there was a bailie to give the sasine, and another person to take the sasine. I will not stop unnecessarily to moot the point, because the question does not arise here, whether or not a sasine would be good in which one person acted as a common agent for both parties, and took the seisin with one hand for the feoffee, which he gave with the other hand for the feoffor. That question does not arise upon the facts of this case. But it is necessary that there should be a bailie to give the seisin, and an attorney, or some person on behalf of the purchaser, to take the seisin. Have we therefore these necessary requisites concurring in this instrument? Unquestionably, no man can read it, and doubt that there was a bailie to give and a person to take the seisin on behalf of the feoffee. But then, it is said that "Brown in Dubbs" is a patent ambiguity; and it is endeavoured to be made out to be a patent ambiguity by an ingenious and subtle, but, it appears to me, an unsatisfactory and inconclusive process of reasoning. I should hold it to be about as clear a proposition, in point of law, as I ever yet heard asserted, that when an instrument mentioned one man as the individual by one name, with the addition of his place of residence, that that is on the face of it unambiguous and certain, and that it requires you to go out of the four corners of that instrument, in order to make it appear that there were two or more Browns, or rather, that there were two or more Browns, tenants, or otherwise, in Dubbs. As far as appears on the face of the instrument, it is very possible (and that is sufficient to make it a latent ambiguity), that there may be no more than one Brown in Dubbs; that possibility is quite sufficient to destroy the patent nature of the ambiguity. It requires averment, as Lord Bacon says (who first laid down

the rule, which has been followed ever since in all the Courts with respect to patent and latent ambiguity),—it requires averment to suggest that there are two Browns in Dubbs; and if averment, followed of course by evidence, shall satisfy you that there were more Browns than one in Dubbs, then what at first appeared to be clear and unambiguous becomes ambiguous, and then (for that is the origin of the rule respecting patent and latent ambiguity), when you have once raised the ambiguity by evidence dehors the deed, you are entitled to take more evidence dehors the deed, for the purpose of laying the ambiguity which evidence dehors the deed had raised. But until evidence, dehors this instrument, shows that there were more Browns than one in Dubbs, in my mind, it presents nothing ambiguous, equivocal, or doubtful whatever. For this reason, unless the law of Scotland has decided that it is fatal to an instrument of seisin to omit the Christian name of the bailie, on the one hand, or has decided, on the other hand, that it is perfectly immaterial to the validity of the instrument, whether the Christian name of the bailie appear or not, I say, unless the law has decided one or other of those two ways, I should hold that it is competent to give evidence, as in the case of a latent ambiguity. But, I take it, the error which the Court has fallen into rests here—that they have allowed evidence dehors the deed upon this question, when the law was clear one way, namely, that it was quite immaterial to the validity of the instrument whether the bailie's name was there or not. The party propounding that evidence was the appellant. The other party took up the challenge, and the Court, deciding between them, allowed them to go into evidence on the one side and the other. But, in my view of the case, the Court,—if its own authority is to be followed, which I am most willing to do, because it consists with the reason of the case, and with the principles of the Scotch law, and is really unimpeached by any authority, or by any decision,—the Court ought to have held that there was no case for evidence, because the immateriality of the Christian name of the bailie was pronounced by a very great majority of their Lordships. The Court, however, was pleased not so to hold, the consequence of which has been much expense, considerable protraction of these proceedings, and the laying before your Lordships' House that mass of any thing but legal evidence, which was the fruit of that unnecessary proof allowed below. I might state to your Lordships one or two instances of the want of any thing like legal nature or aspect in the evidence which has been produced. I might state, that those who took the proof allow particular statements of particular individuals to be given in evidence upon a question of reputation, which is not evidence by law. They allow one man to say what he heard another tell him, which is no evidence by law, that man being alive and produceable as a witness; and, even if he were dead, it is no evidence, because it is too particular upon the question of reputation. In another case, (and I observe upon this, not from the vain desire of carping at what has been done in the Court below, which is not a decorous proceeding in any Court, but I say it with the practical object, as far as my suggestion

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Nov. 26, 1830. can have any weight with those learned persons who superintend such proceedings, of entreating their attention to a stricter enforcement of the rules of evidence below)—not only is one man allowed to tell what another man said, not upon oath, but what another man told him of the contents of a letter, which letter has not been produced in Court, and, in fact, was not even seen by the person who swore what he heard another tell of its contents. My Lords, I do hope and trust that those learned persons who superintend the taking of proof in the Court below, or, at all events, those learned Judges before whom the proof so taken by commissioners, from time to time may come, will consider the fearful consequences to the lives, to the liberties, to the properties, to all the most valuable rights of the King's subjects, of opening a door in judicial proceedings to hearsay evidence, which never can safely be trusted, and which, if allowed to enter into the mind of either judge or jury, must, of necessity, be fatal to the administration of justice. My Lords, with respect to the substance of the proof, supposing it were competent to go into it at all, I have the clearest opinion. But if I either throw out, on both sides, all that was not legal evidence, or if, following the opposite course, I take it all in, whether legal or not—in either way the inference is one and the same, that there is no ambiguity whatever—that there was but one single individual to whom the designation in the instrument of sasine, of "Brown in Dubbs," could apply. It was said that there was another Brown in Dubbs, and that part of Dubbs was in Stevenston, and part in Kilwinning parish; but that statement was wholly without support or warrant from the evidence. Whether you regard Scots money, or road money, or minister's stipend, or militia service as the tests of parochial boundary, there is no doubt whatever, that the suggestion fails which would attempt to show that part of Dubbs is in that parish. It is equally clear, that what is there called Dubbs, is not what in common parlance is called Dubbs, as in the instrument of sasine, but Dubbs colliery, which is quite a different thing; and then, as to what is said respecting other persons of that name, one of whom was a relation of the family, another of whom was the relation of a former Brown in Dubbs, that is entirely at an end, when your Lordships come to consider the almost technical meaning of the designation "Brown in Dubbs." It means, in so many words, Brown, the tenant of Dubbs; Dubbs being a farm as contradistinguished from Dubbs colliery; and the instrument of sasine only in fact says, that the bailie who delivered the infeftment was the tenant of Dubbs farm. It is not contended that there was a change of tenant—it is not contended that there were two farms of Dubbs—it is not contended that there were two tenants of Dubbs. Consequently, I take it to be perfectly clear, even upon the proof itself, whether you take in all the illegal evidence, or shut out all the illegal evidence, and merely go upon the legal evidence, that no ambiguity whatever, upon the whole balance of that testimony, is raised, as connected with the instrument of sasine. But then it is argued, and subtilely argued, that the ambiguity is patent, because the mere want of a christian name is in

law a patent ambiguity: That not only in England but in Scotland, the christian name is a material name, and that the want of what is material in the name, is as if there had been no name at all, and that, consequently, the leaving out John or Robert, or whatever the christian name might be, is as if the whole instrument had been blank, so far as regards the name of the bailie. My Lords, our law is very nice and very technical in respect of christian names, and I do not at all dispute the proposition that was laid down at the Bar upon the import of that law. But in Scotland it is wholly otherwise. There is no such nice and technical exigency with respect to the christian name, dummodo constat de persona, sufficiently in the instrument. The case of Murray *v.* Gordon has been alluded to in support of this argument. Now, when I look at it, it appears to me to operate wholly the other way; and with respect to the four cases cited, I must say this, that they come within a description of cases, as connected with this argument, which is exceedingly common at the Bar, where, in the pressure of circumstances, and when there is no authority of a decided case, it is very usual to produce what may rather be termed apologies for cases than cases. Counsel cite a great number of decisions, and they admit, that those decisions are against them, but then they show that none of the decisions apply to the case before the Court. That way of citing cases does not throw much light upon the question under discussion. Now, when I allude to Gordon *v.* Murray, that decision appears to me to be such, respecting the necessity of the christian name, as cannot be got over; for, observe, it was rested there, not upon common law, which it ought to have been, if the Scotch law were the same as the English, as to the necessity of the christian name.—It is not rested upon the English law, but upon a statute of the year 1672, chapter 21; and, when you look to that statute, you find that it is merely directory—that none of the King's lieges under the rank of a peer shall sign without his christian name, as well as his surname. Upon what penalty? Upon pain of nullity? Upon pain of making the instrument void? No such thing. Upon pain of being punished by Lion King at Arms, and his Majesty's Privy Council. Therefore, it was held to be a directory statute, not making the instrument invalid in the decision of Gordon *v.* Murray. Taking, therefore, the whole of this first branch of the case, I certainly, upon the reasoning, and upon the arguments which have been brought forward on behalf of the appellant, see no ground whatever for doubting the propriety of this very well considered, and very deliberate judgment upon this question of pure Scotch law, and question of Scotch conveyancing, which has been brought before us from those learned Judges. Nov. 26, 1830.

With respect to the two other points of the statute of 54th of the late King, (chapter 137, section 24,) I take it to be clear, that that is entirely wide of the present objection; that there is quite sufficient specification of the sum, when it is said, that "the said sums, taken together, shall not exceed the sum of L.5000, and three years' interest thereon, at the rate of five per cent." I think any words more clear and more plain

Nov. 26, 1830. could not have been employed, to express that the sum meant to be secured was three times L.250, together with the principal sum of L.5000.

My Lords, with respect to the third proposition, as to the name of the witness, it is said, that the attesting witness's name is written on an erasure. Your Lordships will please to consider, that this objection as to the erasure is made, not to the subscription of the witness, but to the insertion of the witness's name in the recital of the testing clause. But then, it is said, that though there is no erasure, whereupon the name is written below the notarial clause, yet that, because there is an erasure in the testing clause, the instrument is made void. Now, I see no warrant, either from the Act of Parliament of 1685, or from any authority that has been produced, to incline me to deviate, in the slightest particular, from the opinion which has been given by the learned Judges with respect to the third point, on which, I understand, they had no difference of opinion. Upon the first, I should not have troubled your Lordships at so great length, had it not been that there was a difference of opinion among those Judges, and it appeared, by taking the opinion of the consulted Judges, that it was deemed a point not quite settled, and had it not also been for the great deference I feel for the learning and experience of the learned Judge (Lord Craigie), whose opinion I differ from upon the present occasion. Upon the two other points, upon which there is no difference of opinion, I propose to take the course which I always intend to pursue. It was the ancient course, and it has only been broken in upon within the period of my memory and my experience at the Bar of your Lordships' House, namely, that, when the judgment appealed from was to be affirmed, there were no reasons given, and when the judgment was to be reversed then the Court gave reasons. I intend, with the permission of your Lordships, not to deviate from that ancient and convenient practice, and only to give my opinion at length when either there has been a discrepancy in the opinions of the Court below, and when the law may require to be looked into for the purpose of making it clear, or when there may be a reversal or a remit, or some direction given as to some further proceeding in the Court below. For these reasons I have no hesitation in moving your Lordships that this judgment of the Court below be affirmed.

The House of Lords accordingly ordered and adjudged that the interlocutors complained of be affirmed.

Appellant's Authorities.—2 Erskine, 3, 35, and 37. Murray, 22d June, 1821, (1 Shaw and Dunlop, 81.)

Respondents' Authorities.—7 Craig, 2. 2. 2 Erskine, 3. 33. 2 Craig, 7. Hilton, 24th February, 1676, (14,331.) Henderson, 8th March, 1776, (5 Sup. 586.) Gordon, 21st June, 1765, (16,818.)

A. MUNDELL,—RICHARDSON and CONNELL,—Solicitors.