

1633. February 14. GRIERSON *against* GRIERSON.

No. 3.

Subscription by initials which is legal, if the party has been in the habit of so subscribing, may be denied by way of exception, without necessity of improbation.

A charge for payment of 200 merks being suspended, because 75 merks thereof were paid, as the parties' discharge thereof bears; and the charger alleging the discharge to be null, because it was only subscribed or marked with the mark, and two initial letters of the charger's name, which he denied to be his subscription; and albeit it were, it was not sufficient to oblige him in this sum, not being subscribed by himself, nor yet by a notary for him, as use is; the Lords repelled the allegiance, and sustained the discharge, the suspender proving by the witnesses insert in the discharge, that the same was so marked, and the said two letters put to by the charger's self, to the acquittance, at the time of the date thereof; which the Lords found sufficient to sustain the same, notwithstanding of the allegiance.

Act. Oliphant.

Alt. Mowat.

*Durie, fo. 671.*

\* \* The like found 17th January 1611, Caraway against Ewing, reported by Haddington as follows:—"A bond or discharge neither subscribed by the party, nor by notaries, for him, but alleged marked by him with two letters for his name, furth of the country, in presence of witnesses subscribing, because the party could not write, and notaries could not be had there; that obligation could not be registered, by compearance of a procurator upon the mandate contained in the bond, which the clerks should not receive, but the same should be registered by summons and citation of the parties. A bond subscribed after that manner will not be sustained, nor give action, unless the user offer to prove the verity thereof by the witnesses inserted."

*Haddington, MS. No. 2096.*

1662. February 26. BROWN *against* JOHNSTOUN.

No. 4.

A bill of exchange being subscribed by a mark, it was found not probative, but the writer and witnesses were allowed to be examined.

Brown having obtained decret against Archibald Johnstoun of Clacherie for £200 Sterling; he raises reduction and review upon this reason, that the ground of the said decret was a bill of exchange drawn by Johnstoun to be paid by Muggown in Blackainor-fair in England, *ita est*, the alleged bill is null, not designing the writer, nor having any witnesses, neither hath it the subscription of Johnstoun, nor the initial letters of his name, but only a mark most easily initiable, which is written about with an unknown hand "Archibald Johnston his mark." It being reasoned amongst the Lords, whether this could be accounted a writ probative; and it being alleged an astruction thereof, that this Johnstoun being a merchant and a drover, was accustomed ordinarily so to subscribe; and to give bills for far greater sums than this;

The Lords thought it would be sufficient amongst merchants, though it wanted witnesses, but being unwilling *via ordinaria* to allow of such a writ, or subscription, for which we have neither custom nor decision; yet in respect of the decret, and of the the alleged custom so to subscribe, they before answer, ordained the oaths, *ex officio*, to be taken of the writer of the bill, if he could be condescended on by either party, and of the witnesses who saw Johnstoun write this mark or receive the money, for which the bill was granted. See No. 6. *infra*.

*Stair, v. 1. p. 105.*

No. 4.

1667. November 16. LAIRD of CULTERALLERS *against* SILVESTER CHAPMAN.

Culterallers having pursued Silvester Chapman for a bond of 200 merks, subscribed by the initial letters of the defender's name;

The Lords sustained the pursuit, the defender being in use thus to subscribe; and that he did subscribe this bond, the notary and three witnesses insert being examined, they proved the defender's custom so to subscribe, but as to the actual subscribing this bond, two were affirmative, and two were negative, denying their subscription, deponing that they remembered not they saw the defender subscribe. The pursuer's own oath was also taken *ex officio*, who affirmed the truth of the subscription, and that the witnesses insert were present. The question arose whether the verity of the subscription were proved.

The Lords found that it was sufficiently proved, the pursuer being a man above all suspicion, and no improbation proponed.

*Stair, v. 1. p. 485.*

No. 5.

A subscription by initials before a notary and witnesses was supported by the party's oath, in opposition to the contradictory evidence of the instrumentary witnesses.

1669. February 1. ROBERT BROWN *against* JOHNSTON of CLACHERIE.

Robert Brown pursues Johnston of Clacherie, for payment of £1200, contained in a bill of exchange, subscribed before two subscribing witnesses, and marked with Clacherie's hand. There were several other bills for greater sums produced, marked with the like mark; and none compearing for Clacherie;

The Lords caused examine the witnesses insert, who deponed that Clacherie was accustomed so to subscribe, and one of them deponed, that he saw him put this mark to the bill in question. Several others deponed, that they had accepted such bills in regard of his custom, and had obtained payment from him, without any debate thereupon.

The question arose to the Lords, whether a sum above £100. could be proved by such a writ, that had only a mark; and having demurred upon it before, till they should try if any such case had been sustained formerly, and none having been found sustaining any writ not being subscribed with the whole name, or at least the initial letters of the debtor's whole name; it was offered by some, that

No. 6.

A bill subscribed by a mark before witnesses, was sustained, it being proved to be the party's custom so to subscribe.