No. 132. Answered for the defender; 1*mo*, The writ being unquestionably subscribed by Patrick Sym and Jean Cruikshanks, to whom William had formerly disponed the subject, it sufficiently denudes them, and excludes the pursuer who is heir to his mother. Nor is it of any moment, that they add the word *consent* to their name; seeing their signing their names simply would have sufficiently conveyed the subject; and the superfluous addition of the word *consent*, cannot prejudice the right *quia utile per inutile non vitiatur*. The act of Parliament 1681, requires only, That a witness should see the party subscribe, or hear him own his subscription, but not that a witness should after a long time distinctly remember that he saw the party subscribe, or heard him own his subscription; and one's owning himself to have been a witness, implies all that is required by the act of Parliament; 2*do*, There was never any law for sidescribing before the act 1696, and the disposition quarrelled was anterior to the act 1696, the first law for sidescribing; and the Lords have frequently sustained writs not sidescribed as probative, where the last sheet duly subscribed, contained the substantial clauses relative to the preceding sheets; and the disposition quarrelled contains in the beginning of the last sheet, a coherent part of the clause concerning delivery of the writs, with the clause of registration, precept of sasine, and clause of reversion. The act 1696 points at what was ordinary, without declaring writs not sidescribed before to be null. It concerns also decreets, as well as contracts; and if the want of sidescribing were a nullity in all decreets, especially decreets of apprising; many hundred securities would blow up, it not having been customary to sidescribe such decreets, till a matter of thirty six years ago.

The Lords found the disposition in favours of Donaldson not probative as to the subscription of William Cruickshanks, but probative as to Jean Cruickshanks and her husband's subscriptions; and in respect the last sheet of the said disposition subscribed by them, contains the material things in the disposition, repelled the objection of its not being sidescribed by them

Forbes, p. 281.

1708. *December* 31.

JAMES SMITH, Factor to the Estate of Wintoun, *against* JOHN MATTHIE, Skipper in Prestonpans.

No. 133.
Menial servants sustained to prove the terms of a bargain, for the master's behoof.

In the process at the instance of James Smith *contra* John Matthie, for the price of a bargain of salt, bought by the defender from the pursuer, the Lords found the terms of the bargain proveable by the depositions of the Earl of Wintoun's own menial servants, for whose behoof the salt was sold; who were found as necessary witnesses in this case as merchants' servants and apprentices are for proving the sale and delivery of their master's goods: Albeit it was alleged for the defender, That domestic servants were not to be so trusted to depone in their master's con-

cerns, as prentices; because the latter being for the most part gentlemen's sons under indentures, who cannot be put away at the master's pleasure, are more like tenants having tacks, than servants, and so not so much under the impression of their masters. No. 133.

Forbes, p. 294.

1709. *February* 5. LADY CARDROS *against* HAMILTON.

No. 134.
Subtenants, to a moveable tenant admitted as witnesses.

A domestic servant *bona fide* dismissed may be a witnes.

The Lords, 20th February 1708, No. 65. p. 8953. *voce* MINOR, reduced a tack set by the Lady Cardross her brother, to Hamilton of Pumpherston, as being set by a minor having curators without their consent; but it having been alleged, that, in contemplation of the long endurance of that tack, he had made considerable improvements and meliorations on the land, of the benefit whereof he was now deprived, and the lady ought not *lucrari cum ejus jactura;* the Lords allowed a conjunct probation to either party of the condition of the land at his entry, and at his removal, whether he had improved it by parking, hedging, planting, liming, building houses on it, digging out whins to make it arable or meadow ground, or if it be no better now than it was at the commencement of the tack.

It was objected against some of the lady's witnesses, that they were either her servants, subtenants or cottars to her moveable tenants, and so no more receivable than their masters would be, being under the same influence, terror and awe; for, by removing a tenant wanting a tack, all his cottars and subtenants must go out with him; and all general laws reach not only the cases expressly insert therein, but likewise all cases of the same nature, where the parity of reasons concludes as pregnantly for the one as the other; and the cause of rejecting moveable tenants is every whit as strong against the cottars. See Stair, B. 4. T. 43. § 7. Answered, There is not the same parity of reason, for the cottar pays me no rent, as the tenant does; though, if the one be deficient, the other will be *subsidiarie* liable, as possessing a part of my ground. The Lords repelled the objections and sustained the witnesses. 2*do*, Objected, the witness adduced was a domestic servant to the lady the time of the citation, at least was put away a little before, of purpose to habilitate him, which is no more to be allowed than for a master to give a moveable tenant a tack who had none before, to capacitate him. Answered, this witness was out of my service five months before the citation, and before there was any view of this probation. The Lords found the objection relevant, and likewise the answer to take it off; but these objections not admitting of terms for proving them, except by the witness's own oath, therefore they ordained him to be first interrogated, and purged anent the time of his going out of the Lady's service, and the occasion thereof, if it was in prospect of his being a witness, or not.

Fountainhall, v. 2. *p.* 488.