No. 14.

act of Parliament or sederunt requires sidescribing, and contracts of marriage are sustained probative against all the subscribers, though some of them only sidescribe; nor can the want of sidescribing here, be any nullity, seeing John's subscribing and sidescribing before witnesses, doth clearly ascertain the conjunction of the sheets.

The Lords repelled the nullity objected against the assignation.

Forbes, p. 504.

1714. *December* 18.

JAMES M'DONALD in Comrie, *against* JOHN M'DONALD, Glover in Fortrose.

No. 15.
A writ found null as not sidescribed, being executed after the act 15, Parl. 1696, establishing the custom of sidescribing.

William M'Donald having granted disposition of some burrow-acres in favours of James his brother; he thereupon intents reduction of an heritable bond granted by the said common debtor in favours of John M'Donald; and it being answered for John, That the disposition being two sheets, was null, as not being signed at the juncture, and nothing written upon the last sheet but words of common stile; he replied, That no statute required the sidescribing of writs, and though in the act 1696, allowing securities to be written book-ways, one clause says, "Providing that if they be written book-ways, every page be marked and signed, as the margins were before;" yet this does not infer an established custom to sidescribe; because, 1*mo*, It is not enough that an act presume barely the custom of sidescribing, to make it the rule; but it must also presume that unsidescribed writs are null, which this act does not, but only presumes that margins were signed before; which custom will not infer a nullity in a writ not sidescribed, till it can be shown by a constant uniform run of decisions: Nay, one or two in such a case would not suffice, the law being, Quod frequenter in eodem controversiarum genere servatum fuit, L. 1. C. Qu. sit long. consuet. far less then can even a constant course of decisions infer so heavy a penalty.

Duplied for the defender: That certainly in general an unsidescribed security of this kind must justly be thought to be no security, because not given under the hand of the granter, since nothing above the last sheet of a security unsidescribed can be said to be so given; for so it were in the power of any person, to prefix what he pleases to a man's subscription, and bind him thereby; 2*do*, This necessity of sidescribing is established by inveterate custom, and the knowledge of every person proves the fact and custom, though *facti*, in this case, needs no other proof; 3*tio*, It is evident from the above cited act of Parliament, where not only the words quoted by the pursuer are set down about the middle of the act, but the last words of it are, "Declaring such writs to be as valid and formal, as if written on several sheets battered and signed on the margin, according to the present custom;" where custom is proved with a witness; for if the one be valid and formal, the other must be invalid and informal. And doubtless long

and uniform consuetude is the best advised law, and Quod usus approbavit, &c. For though decisions be good proofs of custom, yet inveterate uncontroverted custom must be better; because, if the thing had not been controverted, decisions thereon had been needless.

No. 15.

The Lords sustained the nullity, That the disposition produced by the pursuer, as his title in this process, was not sidescribed; the writ being granted and not sidescribed on the joining of the sheets, after the act of Parliament establishing the custom of sidescribing the joinings.

Act. *Geo. Mackenzie.* Alt. *Arch. Hamilton.* Clerk, *Mackenzie.*

Bruce, v. 1. *No.* 25. *p.* 33.

1724. *December* 16. The EARL of TRAQUAIR *against* JANET GIBSON.

No. 16.
The subscription of a cautioner in a tack by initials was sustained, having the attestation of a notary and witnesses.

The defender had become cautioner in a tack granted by the Earl to Robert Cairns, which she signed only by the initial letters of her name. One notary had wrote her name at length as explanatory of her initials; and two witnesses were adhibited who were inserted in the tack as witnesses to her subscription. She being charged as cautioner, offered the following defences.

1*mo*, That the 80th act of Parliament *in anno* 1579, allowing notaries to subscribe for parties, does require two notaries and four witnesses; but in the present case there is only one notary and two witnesses.

2*do*, That the 21st act of Parliament 1672, concerning the privileges of the Lyon, does regulate the manner of the subscriptions of persons of all degrees, and requires that all persons, under nobility and dignified clergy, subscribe by writing their names at large, or at least the first letter of their christened name and their sirname at full length, whereas here there is only the first letter of the sirname.

3*tio*, The Lords, by their decision 18th June, 1707, Meek against Dunlop, No. 12. p. 16806. rejected an execution because it was signed only by the initials of one of the witnesses.

It was answered to the 1*st*, That the act 1579 concerns only the case where parties do not subscribe at all, but where a party has subscribed by initials, the subscription of a notary is superfluous. To the 2*d*, That the act 1672 does not exclude subscriptions by initials, but only prohibits persons under the degree of nobility, &c. to subscribe by the names of their land estate; and what is there said as to writing the sirname at large is demonstrative, but not exclusive or prohibitory of signing by initials. To the 3*d*, it was answered, That the decision concerning witnesses to an execution, where witnesses who can write their names at large, may and ought to be adhibited, will not apply to the subscriptions of parties to obligations, where the creditor must take the subscription as the debtor can adhibit it.