

bound and subscriber." This paper coming thereafter to be quarrelled by this pursuer and her husband, it was alleged for them, No. 242.

*1mo*, That the body of the paper running in the name of Cullenoch, and he not subscribing it, it is null; and there being no mention of David till after designation of the witnesses, though it were pretended, that, by Cullenoch, in the body of the writ, David is meant; yet, since *verba valent usu*, a man's eldest son will not be understood to be designed by his father's title; so that, if by Cullenoch is understood the defender, the writ is null, as wanting his subscription; and, if we understand the defender's son, then as to him it is null also, there being no mention of him till after the witnesses are designed; so that, in effect, his subscription is without witnesses; *2do*, The writ is null, as wanting the writer's designation.

Answered for the defender: *1mo*, That, though his son was not the principal party, yet he was party in the agreement, made the offer, as the agreement bears, and thereafter subscribed and bound himself as such, in the words above rehearsed; *2do*, That the writ, though subscribed three several times, yet was all but one writ; and, though the designation of the writer be not inserted in the first two subscriptions, yet it is in the last, which makes the whole writ effectual, which the Lords found in a parallel case, 21st November 1710, Hamilton of Wishaw *contra* More of Cairnhill, Sect. 11. *h. t.*

"The Lords repelled the nullity."

Act. Pat. Grant.

Alt. Boswell.

Clerk, Gibson.

Bruce, No. 8. p. 12.

## SECT. X.

Delivery in what Cases necessary?

1624. November 11. CHILDREN of WALLACE against Their ELDEST BROTHER. No. 243.

A bond of provision in favour of children, lying by the father the time of his decease, sustained without delivery, though dated 25 years before.

*Durie.*

This case is No. 14. p. 6344. *voce* IMPLIED CONDITION.