

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.