

No. 214. against him, unless he had subscribed the same, and therefore he ought yet to prove the same by the suspender's oath. The Lords having considered the decret, bearing, that the suspender had failed in the probation of any order from the charger for the delivery of the goods, and that the product was taken by a privateer coming to Scotland with other merchant goods put on board that same ship, and that the first commission was only subscribed by initial letters as well as the second not controverted; they did assoilzie from the reason of reduction, and found that the subscribing with initial letters was binding and sufficient, and so found the letters orderly proceeded.

*Gosford MS. No. 831. p. 524.*

1676. July 19.

FORREST *against* VEITCH.

No. 215.  
A tripartite  
minute among  
merchants  
was sustained  
without wit-  
nesses.

In a competition for a sum due by Sir George Maxwell, who became debtor for Sir Robert Stuart and others, and got up their bonds granted for the price of a bargain of victual sold by James Sanderson to them, and sent him to Ireland for the garrisons there, for which the Parliament of England and the said Stuarts gave bond; the bargain being made with Sanderson, and the bonds granted in his name, there is a writ produced by way of tripartite contract by Sanderson, James Ker, elder, and James Ker, younger, bearing, "That albeit the bonds were only in the person of Sanderson, yet that all the three were sharers in the bargain of victual, and in the right of the bonds," and Barbara Forrest, relict and executrix-creditrrix to James Ker, younger, craved the sums now remaining as her husband's share, the shares of the other two being paid before. It was alleged, That this tripartite contract was null, as wanting writer's name and witnesses. It was answered for Forrest, That she designed the writer, and this being a writ amongst merchants *in re mercat'ria* for a bargain of victual, and subscribed by three parties, it was abundantly valid, and much more than a bill of exchange without any witnesses at all.

Which the Lords found relevant, and sustained the writ.

*Stair, v. 2. p. 454.*

No. 216.  
A merchant's  
account  
found proba-  
tive by the  
subscription  
of the debtor,  
though with-  
out witnesses.

1678. January 2. M'LURG *against* The EARL of DALHOUSIE.

John M'Lurg, merchant in Edinburgh, pursues the Earl of Dalhousie as representing his brother Robert Ramsay, for payment of an account of furniture subscribed by the said Robert. It was alleged for the defender, That his brother's pretended subscription could not prove, because it wanted witnesses. It was answered, That bills of exchange and merchants counts are always sustained by