

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-creditrix 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 mercatoria* 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

single subscription, and are never annulled for want of the solemnities in other solemn contracts. It was replied, That in this account there were some articles for money advanced which cannot pretend that privilege, and the title of the account bears annual-rent, which might have been added *ex post facto*, and doth require a solemn contract with witnesses. There is also a postscript after the subscription.

The Lords found the merchants count subscribed probative, though without witnesses, although some inconsiderable articles bore "money advanced by the merchant," but found not his subscription sufficient to instruct annual-rent agreed on; and did not sustain the postscript.

Stair, v. 2. p. 587.

1692. February 4. LESLY of Balquhain *against* MENZIES.

Bills of exchange were, before the acts of limitation, considered as so much privileged, as not even to be subject to the vicennial prescription of holograph writs.

* * This case is mentioned by Forbes in his Treatise on Bills. See No. 188. p. 1628.

* * The same seems to have been found 25th July, 1732, in the case of Rodgers against Cathcart and Ker. See No. 188. p. 1631. See APPENDIX.

1697. July 21. INGLIS *against* CLARK.

The Lords found, That without regard to the act of Parliament 1681, custom must be the rule in protests of bills of exchange, as well as in the bills themselves, and therefore a protest was sustained, though the witnesses were neither designed nor subscribing.

Fountainhall.

This case is No. 6. p. 7724. *voce* JUS QUÆSITUM TERTIO.

1706. January 1.

MARJORY ROW *against* CHARLES ROW of Innerallan her Brother.

In the reduction at the instance of Marjory Row against Charles Row her brother of a decret arbitral pronounced betwixt them, she insisted upon these reasons; *1mo.* The submission bore to be subscribed with the blank on the back

No. 219.

A submission bore to be subscribed "with the