

No. 11. also of his surname? *2do*, Whatever may be in writs that only bind *ex uno latere*; yet in mutual contracts, the one fortifies the other; and if the suspender were craving implement of this contract, the other party who had subscribed *ad longum* could not obtrude this nullity, that you have only signed by initial letters, for it cannot subsist on the one side, and claudicate on the other: And the decision cited is in the case of a discharge, and even sustained that way of subscribing if it had been his usual manner so to do. The Lords repelled the objection, and sustained the contract, unless the suspender would prove he used to subscribe *ad longum*; reserving improbation, as accords.

Fountainhall, v. 2. p. 133.

1707. June 18.

No. 12:

JOHN MEEK in Hedrefaulds, *against* JOHN DUNLOP in Foulshies.

The Lords refused to sustain an execution of a summons, where one of the witnesses subscribed by the initial letters of his name, because though a party's subscription by two initial letters be sustained where it is proved that he was in use so to subscribe, there is no necessity to sustain a witness's subscribing in that manner.

Forbes, p. 169.

* * Dalrymple reports this case:

Meek having raised a process against Dunlop, and insisting in his libel, it was alleged no process, because the execution was not signed by the messenger before two subscribing witnesses, as the act of Parliament requires; one of the witnesses insert in the execution subscribing only in such a manner as it was hard to be understood, whether it was by initial letters or a mark.

The question being brought to the Lords by report, the Lords, by inspection, did observe, that after the said letters or mark the word *witness* was subjoined, which was also bad writ; and it appeared to them, that if the witness could write that word with his own hand, he might more easily have written the letters of his own name; and if that word was subjoined by another hand, it was an unwarrantable practice; but they thought it more proper to consider the general point, how far witnesses who could only sign by initial letters might be adhibited as witnesses to executions of summonses or other legal diligences;

The Lords found, that such witnesses were not sufficient; and that though the obligations of parties signed by initial letters are good, where the party was in use so to subscribe, because parties must subscribe their obligations as they can; but

that the executor of diligences must be careful to adhibit such witnesses as can fully and formally sign their names. No. 12.

Dalrymple, No. 80. p. 101.

Fountainhall also reports this case :

John Meek pursues a reduction against one Duncan. It was objected the execution of the summons against him is null ; for, though it be subscribed by two witnesses, yet one of them only subscribes by a mark, or the initial letters of his name ; and though the word witness be adjected, yet it is most defective and illegible, *et non constat* it is done by him. Answered, In some remote places, it is difficult for messengers to get witnesses to their executions who can subscribe *ad longum* ; and here he offered to supply the defect, by adducing the witness to own the subscription, and abide by the verity thereof. The Lords considered that parties contracters, or debtors, their subscribing by initial letters, has been sustained, where it has been adminiculated, by instructing that it was their usual way of subscribing, but it was never pretended in the case of, witnesses ; and the 5th act of Parliament 1681, requiring witnesses to messengers' executions of summonses, puts them in the same case with executions of inhibitions, hornings, arrestments, or intimations. Therefore, in all these respects, they found the execution null, and that Meek behoved to execute anew.

Fountainhall, v. 2. p. 372.

1708. November 23.

SIM against DONALDSON.

A disposition being challenged for want of sidescribing, the objection was repelled in respect the last sheet, duly subscribed, contained all that was material in the disposition.

Forbes.

* * This case is No. 132. p. 16713. *voce* WITNESS.

1711. June 8. The CREDITORS of WILLIAM PATON of Panholls, Competing.

In the competition of the creditors of William Paton of Panholls, an assignation granted by John and Mary Patons, to the said William Paton their eldest brother, subscribed by both the cedents, but sidescribed at the joining of the sheets only by John before two witnesses, being quarrelled by Mr. John Cunningham, schoolmaster in Edinburgh, husband to Mary Paton, as null *quoad* her, upon this ground, that she did not sidescribe it ; it was answered for the other creditors, that no

No. 13.

No. 14.

A writ subscribed by two, and sidescribed at the joining of the sheets only by one of them, sustained as valid *quoad* both.