

1776. *January 18.* WILLIAM SIBBALD *against* JOHN SIBBALD.

No. 140.

What, if one of the instrumentary witnesses is dead, and that the only other instrumentary witness makes oath that the subscription by him as witness is truly his subscription, but adds, that he did not see the granter of the deed exhibit his subscription?

In the question between these parties, one reason of reduction insisted upon was, that the disposition challenged is in itself void in law, as neither being subscribed by the granter, before two subscribing witnesses, nor his subscription ever after acknowledged to them; and as to this point, the Lord Ordinary pronounced the following judgment: "Finds, that, as this disposition bears date in the year 1737, and has all along been the title upon which the heirs of the second marriage have possessed the lands, without interruption or challenge, till last year that this present process was brought by the pursuer, the heir of the first marriage; and that one of the instrumentary witnesses is dead, and the only other instrumentary witness has deponed that the subscription by him, as witness, is truly his subscription; finds, That his having deponed when aged 80 years, and in the year 1774, that he did not see the granter of that deed, which bears date in the year 1737, exhibit his subscription, cannot have the effect to annul the deed, but must be held to proceed from failure of memory in the old man; and the rather, that the other witness, the writer, is proven to have been a man of good character for accuracy and honesty; and, therefore, repels the reasons of reduction, and assoilzies the defender." And a reclaiming bill against this judgment was refused, without answers.

For Petitioner, *Maconochie.*

Fac. Coll. No. 212. p. 162.

No. 141.

1779. *June.* STEWART *against* STEWART.

One witness cannot sign for another, any more than one party can sign for another. (See APPENDIX.)

Fol. Dic. v. 4. p. 409.

No. 142.

1780. *January 20.* HERIOT *against* WIGHT

The reference to an oversman in a submission must be signed by the arbiters before witnesses.

Fac. Coll.

* * This case is No. 60. p. 661. *voce* ARBITRATION.