

No. 205. required by the act of Parliament 1579; and as the defender alleged, it ought to have had, otherwise that it was null; which allegiance was repelled, except the defender had therewith denied the subscription of the said count to be his hand-writ; which not being alleged, the Lords found the count not to be null, albeit it wanted witnesses, neither found it necessary that the pursuer should prove the verity of the subscription, to supply that defect of want of witnesses, except the same had been alleged not to be the defender's hand-writ, seeing the reason of the said act of Parliament requiring witnesses was, that the verity of the writs might be known.

Alt. Belshes.

Durie, p. 324.

No. 206.

1629. *February 12.*

LORD LESLIE *against* LAIRD BOQUIEN

A tack of teinds being let to the heritor, with this condition, That if he did sell the lands, the tack should be void; and the heritor having sold the lands, and the titular assigned the contract to a third party, who insisted upon the irritancy; a missive letter produced under the titular's hand, bearing his consent to the alienation of the land, was sustained, though without witnesses, as a good proof of his consent, even against the assignee, until the same were challenged in an im-probation.

Durie.

* * * This case is No. 493. p. 12604. *voce* PROOF.

1631. *July 1.*

INGLIS *against* M^cCUBINE.

No. 207.

Where the hand writing is denied, of a writing without witnesses, the party founding on it must prove it.

John M^cCubine by his ticket being bound to John Inglis, to pay to him 300 merks, and being pursued for payment, he alleged the ticket to be null, because it wanted witnesses; and the pursuer replying the same to be holograph, and so there was no necessity of witnesses, the defender alleged, that it behoved to be proved, that it was his hand-writ: And the pursuer answering, that there was no necessity to prove the same, seeing the ticket bore it all to be written with his own hand, and subscribed by him, so that he needed not to approve the same; but in respect of the foresaid tenor thereof, the defender ought to improve the same, or else it should have full faith and force; the Lords found, that where the defender, or his procuratory for him being so informed (if the defenders self be not present) denies the hand-writ in that writ, whereupon pursuit is moved against him, and where there are no witnesses therein insert (which is a necessary circumstance required to the validity thereof, and the ordinary mean whereby to improve)

the pursuer ought to prove the writ to be holograph, albeit it purported to be written all with the party's hand-writ, and subscribed by him. No. 207.

Clerk, Scot.

Durie, p. 592.

* * The same found, same day, Elliot against Ellies, No. 114. p. 2649. *voce*.

COMPENSATION.

1632. July 12. RAMSAY and HAY *against* PYRONON and EDGAR.

One Pyronon a Frenchman, and his factor, having obtained decret against the bairns and executors of umquhile Patrick Ramsay, and Alexander Hay their tutor, for payment of money owing to the Frenchman by the defunct; after the discussing of the suspension of this decret, the monies being consigned by Alexander Hay their tutor, was decerned to be given up to John Edgar, procurator for the Frenchman, the said John being bound to repay the same *cum omni causa*, in case the said Alexander Hay and his minors prevailed in the reduction, which they had inteded of that decret; which reduction was inteded and pursued by them against Pyronon's self, and the said John Edgar, upon this reason, that the said Pyronon by his missive letters, subscribed by him, and written to umquhile Patrick Ramsay, the defender's father, had acknowleged these sums satisfied, for which sentence was given against them; and since the intending of this reduction, Pyronon being dead, it was alleged by John Edgar, that he could not be compelled to sustain this process, and to dispute upon this letter, whereupon the reason is founded, while some person to represent the principal party now deceased were summoned, who might answer to the letter, and might know how to elide the same, seeing he was only bound to repay the money, if the decret were reduced, as he is yet content to do; but the same cannot be reduced against him, he not being party therein, but of necessity the reduction ought to be deduced against the principal party, obtainer thereof, and who has only interest to maintain the same. This allegeance was repelled, and the process of reduction sustained against this excipient, receiver of the money, and who was bound, as said is, to repay the same, without necessity to call the principal party, obtainer of the sentence to this reduction, or any other representing him. And thereafter the defender alleging, that the letter produced, which was the ground of the reduction, was null, seeing it wanted witnesses, and designed not the writer according to the act of Parliament, the Lords found, that such private letters betwixt merchant and merchant, came not under that act of Parliament, albeit the missive letter bore an exoneration of a great debt acclaimed by the alleged writer thereof, and also that thereby he was constituted besides, to be owing unto him, to whom it was written, a great sum of money, whereby the defender alleged, that such private letters would be of a greater force than authentic writs, which may fall under the act of Parliament, which was repelled. *Item*, The defender denying the subscription of the letters to be Pyronon's hand-writing; likeas, he produced a letter, all written

No. 208.

The bare subscription of missives in re mercatoria is sufficient.