1753. *December* 18. URQUHART of Meldrum *against* The CROWN.

No 137.
A disposition *anno* 1636 found null, because the designations of the witnesses were not inserted in the body of the deed. But found that this might be supplied, by condescending on and instructing their designations.

This judgment reversed on appeal.

In a competition betwixt the Crown and Urquhart of Meldrum, about the patronage of the kirk of Cromarty, to which both derived right from the same author, Sir Robert Innes, it was objected in behalf of Meldrum against the progress produced for the Crown, which was clearly preferable, That the disposition *anno* 1636, by Sir Robert in favours of the bishop of Ross, in whose right the king now is, is informal, and therefore null, because the witnesses who subscribe the disposition, viz. John Innes, Mr. William Innes, and Alexander Livingston, are not designed, nor at all mentioned in the body of the deed. In answer to this objection it was said, that anciently nothing was necessary to authenticate a writing but the seal of the granter; that every man spoke as the king does at present by his seal; and like the king was entitled to say *teste meipso*; that this continued till the act 117, Parl. 1540. which required the subscription of the party before witnesses; that the act 80, Parl. 1579. requires only that witnesses adhibited to the subscription of a notary be designed; and that before the statute 1681, there was no law requiring the names or designations of the witnesses to be inserted in any writing subscribed by the granter himself.

The reply was put upon the act 1579, requiring the witnesses to be designed, which was constructed to be a regulation for all writs, those subscribed by the party, as well as those subscribed by notaries for the party; that there was *par ratio*, that the words of the law would bear this construction; and that *in dubio* every law ought to be constructed in its most rational sense.

"The Lords sustained the objection that the witnesses' designations are not inserted in the body of the disposition 1636; but found, that the same may be supplied by condescending on their designations and instructing the same."

It appears to me a very clear point, that before the act 1681, it was not a necessary solemnity in an obligation subscribed by the granter, that the witnesses should be designed or so much as be mentioned. By the common law, sealing was sufficient. The act 1540, made the subscription of the party essential, without any other form than that the subscription should be in presence of witnesses. It was not even made necessary that the witnesses should be named. The act 1579 relates only to deeds subscribed by notaries in place of the party. This is an extraordinary power, and the legislature justly thought that it required extraordinary checks. A deed subscribed by the party himself is in a very different case. Originally sealing was thought sufficient; the subscription of the party was made necessary no earlier than the year 1540; and in 1579, the subscription of the party was in all appearance reckoned of itself a sufficient security against forgery, without any other check. Therefore neither the words nor spirit of this statute comprehend those who are witnesses to the subscription of the party himself.

This judgment was reversed in the House of Lords.

Sel. Dec. No. 60. *p.* 79.

*** See the report of this case from the Faculty Collection, No. 15. p. 9915. *voce* PATRONAGE.