

1633. February 14. RANKIN against WILLIAMSON, &c.

The defenders being pursued to pay the sum confessed by their subscribed ticket to be owing, and they alleging that the ticket was null, as wanting witnesses; it being replied, That he referred the verity of the subscription, that it was their hand-writ, and that it was their proper subscription, to their oaths, so they needed no witnesses; the other duplying, that that was not enough, unless he referred also to their oaths, the verity of the debt to be resting owing unpaid; the Lords found, that the said ticket, wanting witnesses, ought not to be sustained, by referring to the defenders' oaths, that the subscription thereof was their proper hand-writ; except that they also referred therewith the verity of the debt resting owing, if it be yet owing unpaid; which was the rather done, because the debt acclaimed was sought by this ticket, whereupon the pursuit was founded, being of the date *in anno* 1608, now by the space of 25 years since, and no claim therefore while now. It was replied, That seeing the writ was subscribed by four persons, whereof each one of the four was addebted in his own several sum, their subscriptions being all at one time, might supply want of witnesses; for each one of them might be witnesses to the other, which was repelled.

Clerk, *Hay*.

*Durie, p. 671.*

No. 103.

Found that four co-obligants could not be witnesses to the subscriptions of each other.

1634. July 3. HUME against HUME.

One Hume, brother to Polwart, being charged to pay a sum contained in his bond subscribed with his hand, who suspending and alleging, the bond to be null, because there were no witnesses inserted in the body of the bond; and albeit the same was subscribed by two witnesses, yet seeing their names were not inserted in the bond, nor no other witnesses names, therefore the same ought not to make faith, in respect of the act of Parliament 1579, which requires that the witnesses be inserted in the bond; the Lords repelled this reason, and sustained the bond, seeing there were two witnesses subscribers of the bond, which they found also good as if their names had been inserted; and where this decision may appear to differ from that of the Sheriff of Cavers, (No. 94.) the same may be reconciled thus, that that of the Sheriff of Cavers was in a writ not subscribed by the party, but by notaries for him, in which case the act of Parliament requires four witnesses' names to be specially designed and inserted in the writ, and this writ is subscribed by the party's own hand, and the act strikes not so directly on it.

Act. *Gray*.

Alt. *Craig*.

Clerk, *Gibson*.

*Durie, p. 723.*

No. 104:

Designation of the witnesses.

See No. 94.