1785. *June* 23. HUGH M'ILWRAITH, *against* GILBERT M'MIKIN.

No. 29.
Signing by initials, no witnesses being present, invalid, where the party is ignorant of writing.

Hugh M'Ilwraith claimed the contents of a primissory note, in consequence of a gratuitous indorsation from the creditor deceased, which was only signed with the initials of her name. No witnesses were said to have been present when the indorsation was executed; and the deceased could not read writing.

But the voucher was found in the possession of the indorsee. And it was farther alleged, that in the very few transactions in which the defunct was concerned, she had adhibited her subscription in the form here used, and that she had not only informed several persons of her purpose of bestowing this debt on the claimant, but had also acquainted them with her having carried her design into execution.

Gilbert M'Mikin, however, the executor of the deceased, called in question the validity of this indorsation, when Hugh M'Ilwraith

Pleaded: It has not been held essential for authenticating writings, that the subscriber's name should appear at full length. Neither has it been considered as absolutely necessary in deeds where witnesses are not required to attest full subscriptions, that these should be called to every signature by initials. It is sufficient, either that the subscriber was in the practice of signing in this manner, or that the genuineness of the subscription appear from the circumstances of the case; 16th November 1677, Culterallers against Chapman, No. 5. p. 16803; 26th February 1662, Brown, No. 4 p. 16802; 25th June 1724, Paterson, No. 305. p. 11627.; Crosbie, No. 23. p. 16814. Without this, not only the subscription by initials, of persons versant in writing, which are very frequent, would become ineffectual; but the great bulk of the common people, who without any knowledge of writing, carry on a considerable trade, by means of subscriptions of this kind, would in a great measure be excluded from commerce.

A method, it is true, has been devised by statute, for the execution of deeds by such as are ignorant of writing. But were a provision of that nature entirely to exclude the use of every other or less formal document, it would follow, that a bill of exchange, or other mercantile voucher, should not be sustained, unless completed in terms of the act 1681, before witnesses, subscribing and designed. In both cases, these general rules have been tempered in practice, nor a more rigid mode of verifying writings required than is compatible with the circumstances of society. The indorsation, therefore, in question, authenticated by the usual subscription of the party, and confirmed by such unequivocal acts of homologation, must be quite unexceptionable.

Answered: A distinction is here to be made between persons conversant in writing, and capable of subscribing their names at full length, and those who, though they have been taught to frame, in an irregular manner, the initial letters of their name, are yet so wholly illiterate as to be unable to know the import or effect of writings set before them. Subscription by initials, in the case of the former, when it is proved to be their usual method of signing, is held to be sufficient.

No. 29.

The peculiarities of a current hand are there so far distinguishable as to afford the means of discovering forgeries *ex comparatione literarum;* while the signature, if truly adhibited, is equally with a complete subscription expressive of the party's deliberate intention to become bound, or to execute the deed signed by him. But in the case of the latter, the object of requiring the subscription of the party as an indispensable solemnity, is in no degree attained by the observance of the same form. Not only is the aukward imitation of letters by those who cannot write, destitute of that uniformity by which genuine subscriptions may be distinguished from such as are false; but from the signature, though actually adhibited, there arises no certainty of the deed's being of the nature and effect which the subscriber intended or understood it to be.

It was with a view to the dangers to which persons of this last description were exposed, when parties to written contracts, that the legislature introduced the forms prescribed by the statutes 1540, C. 117. 1579, C. 80. Nor is it of importance, in the present dispute, that, by way of exception from these salutary regulations, the subscription by initials, even of those who cannot write, has been sustained, especially in mercantile transactions, when, together with the uniform custom of signing in that manner, it can be shown by witnesses present, and before whom the nature of the business was explained, that the initials were really affixed by the party. For beyond this the decisions have never gone; nor could a greater latitude be permitted, without opening a door to innumerable frauds. Hence the present indorsation can be entitled to no regard. The instances in which the deceased had occasion to subscribe were too rare to establish an uniform custom of signature. The subscription, though genuine, could afford no conclusive proof of a purpose to transfer the debt, gratuitously, to the claimant. The evidence, therefore, here offered, by extraneous witnesses, of such an intention, is equally inadmissible as if no indorsation whatever had appeared.

The Lord Ordinary sustained the objection to the indorsation, "in respect it was acknowleged by Hugh M'Ilwraith, that he could not prove that the deceased did actually adhibit her subscription by initials to the bill in question."

A reclaiming petition for Hugh M'Ilwraith was appointed to be answered, rather for the purpose of fixing the point by a solemn decision, than from any difficulty in the case.

And after advising the reclaiming petition, with answers for Gilbert M'Mikin, the Lord Ordinary's judgment was affirmed, and expenses awarded.

Lord Ordinary, *Braxfield.* Act. *Maconochie.* Alt. *Hay.* Clerk, *Home.*

C. *Fac. Coll. No.* 213. *p.* 333.