

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 wit-
nesses, the
party found-
ing 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)