

No. 239. parties-contracters, but it was sufficient in law if the Duke's principal was signed by Smith and his counter-part by the Duke ; and it was so found lately, in a case of Sinclair of Ossory in Caithness ; and therefore sustained the marginal note, though not signed by the Duke, seeing it was contained in his own double uncancelled : But in regard the said clause, in the two copies, seemed materially to differ, the Lords appointed them to be heard thereupon before the Ordinary.

Fountainhall, v. 2. p. 113.

1706. *January 1.*

Row against Row.

No. 240.

The Lords sustained this reason of reduction relevant to reduce a decret-arbitral, That the blank on the back of the submission was subscribed by the arbiters at the same time that the submission was subscribed, and not after inserting the decret-arbitral ; and they found the allegiance proved by the docquet of the submission, in the following words, " And the parties and arbiters in token of their acceptance have subscribed these presents, with the blank on the back thereof, the said 7th January, &c."

Forbes.

* * This case is No. 219. p. 16971.

No. 241.

1708. *July 7.*

PATON against LEITH.

In a cause depending before the privy council, a committee of their number being delegated to examine witnesses, and the cause being submitted to this committee, a decree-arbitral, not signed by the plurality, but only by him who was chosen preses of the meeting, while they acted as a committee, was found null.

Forbes.

* * This case is No. 221. p. 16969, (16973.)

No. 242.

Three doubles of a writ having been made, it was found no nullity that in two of them the writer's designation was neglected, the third having been formal.

1716. *July 3.*

POOR MARGARET CUBBISON and her Husband, against JOHN CUBBISON.

There being mutual claims betwixt these parties, at length there was a communion set on foot betwixt John Sloan the pursuer's husband, and David Cubbison younger of Cullenoch the defender's son, which ended in an agreement ; and three doubles of a contract being drawn up, (one whereof only mentions the writer's designation), and the son having communed for his father, subscribes the same, but not the father, though it runs in Cullenoch's name, only these words occur in the body of the paper, " Cullenoch's son has offered 1500 merks," and in the end these are adjected, " David Cubbison of Cullenoch is the party here.

bound and subscriber." This paper coming thereafter to be quarrelled by this pursuer and her husband, it was alleged for them, No. 242.

1mo, That the body of the paper running in the name of Cullenoch, and he not subscribing it, it is null; and there being no mention of David till after designation of the witnesses, though it were pretended, that, by Cullenoch, in the body of the writ, David is meant; yet, since *verba valent usu*, a man's eldest son will not be understood to be designed by his father's title; so that, if by Cullenoch is understood the defender, the writ is null, as wanting his subscription; and, if we understand the defender's son, then as to him it is null also, there being no mention of him till after the witnesses are designed; so that, in effect, his subscription is without witnesses; *2do*, The writ is null, as wanting the writer's designation.

Answered for the defender: *1mo*, That, though his son was not the principal party, yet he was party in the agreement, made the offer, as the agreement bears, and thereafter subscribed and bound himself as such, in the words above rehearsed; *2do*, That the writ, though subscribed three several times, yet was all but one writ; and, though the designation of the writer be not inserted in the first two subscriptions, yet it is in the last, which makes the whole writ effectual, which the Lords found in a parallel case, 21st November 1710, Hamilton of Wishaw *contra* More of Cairnhill, Sect. 11. *h. t.*

"The Lords repelled the nullity."

Act. Pat. Grant.

Alt. Boswell.

Clerk, Gibson.

Bruce, No. 8. p. 12.

SECT. X.

Delivery in what Cases necessary?

1624. November 11. CHILDREN of WALLACE against Their ELDEST BROTHER. No. 243.

A bond of provision in favour of children, lying by the father the time of his decease, sustained without delivery, though dated 25 years before.

Durie.

This case is No. 14. p. 6344. *voce* IMPLIED CONDITION.