

write, was not a ground to take away the contract, the same being truly done by the notaries, the writ never being quarrelled by the party upon falsity, nor denied by her; and the Lords found it not necessary, that the pursuer should be urged to refer to the defender's oath, that she gave command to the notaries to subscribe the contract for her, it not being impunged by her upon that ground, as said is, nor to allege or prove any of the impediments foresaid, which might excuse her not subscription.

Act. Burnet. &amp;

Alt. Craig.

Clerk, Gibson.

*Durie, p. 825.*

No. 49.

1666. June 29.

JANET KID *against* DICKSON.

Janet Kid pursues reduction of a disposition of some tenements in Forfar, made by her father on this ground, that the disposition is subscribed but by one notary and one witness, and the charter by one notary and two witnesses, and so is null by the act of Parliament, requiring two notaries and four witnesses in writs of importance. It was answered, That the tenements being small, the price of one expressed being 200 merks, and the other 300 merks, the foresaid two writs were sufficient, clad with many years possession in the defunct's time, who never challenged the same; *2dly*, They are established by the sasine given *propriis manibus*, conform to the obligation of the disposition and charter by a town-clerk, registrated in the town-books.

The Lords having ordained the defenders to condescend, upon any adminicles they had, for astructing the verity of the subscription, they condescended only on seven years possession, which the Lords found was not sufficient to establish the right without reduction; but if the defender had condescended on 40 years possession, the Lords declared they would hear them dispute, whether that could be sufficient or not.

*Stair, v. 1. p. 384.*

No. 50.

Deed subscribed by one notary and two witnesses reducible.

1667. July 26.

Mr. JOHN PHILIP *against* Mr. JOHN CHEAP.

Mr. John Philip pursues his tenants upon a disposition granted by Michael Philip. Compearance is made for Mr. James Cheap, who apprized from Michael Philip's heir, who alleged that the disposition is null, neither being subscribed by the disponer, nor by two notaries for him, albeit it mention the subscription of three notaries, yet two of them subscribed not at the same time with the third; and neither of these two bear, that they did subscribe at command, but that they subscribed only for Michael Philip, because that he could not subscribe himself; and albeit the body of the writ mention such witnesses to the command given to

No. 51.

A writ subscribed by notaries, where the notaries' docquet bore that they subscribed for the party, but did not mention whether at his command found null.

No. 51. these notaries, yet it is written with another ink, and does not appear to be written at the time of the subscriptions, being the hand-writ of him that wrote the body, which mentions to be written by him at Edinburgh, and the subscription is at Newburgh; and because the notaries' subscription must give faith to the body of the writ, and not the body to it. It was answered, that they offer to prove by witnesses insert, that the command was given: It was answered that the command being the most substantial point of the subscription, could not be proved, or supplied by witnesses, for the subscription of the notaries, because the party could not subscribe, signifies nothing without the command of the party, for whom they subscribe, and warrant or command in most ordinary matters is not at all proveable by witnesses.

The Lords found the disposition null, and that the subscription of these two notaries not bearing, that it was by command, could not be supplied by the witnesses insert, unless it had been the subscription of a co-notary subscribing at the same time with a notary, whose subscription bore command. Here it was debated whether the subscriptions of notaries at divers times were sufficient, or if the subscription of a notary who was not authorized by the English, and did forbear to act at that time, were sufficient; but the former vote made these to be undecided, as not necessary, seeing the writ was annulled by the former vote.

*Stair, v. 1. p. 481.*

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1668. *January 16.*

No. 52. ANDERSON, DEAN OF GUILD OF ST. ANDREW'S, *against* JAMES TARBAT.

William Tarbat having granted bond for £300 to his son James and other children, the said bond was reduced at the instance of a creditor, because it was subscribed only by one notary, being a matter of importance; though it was alleged, that it resolved in three several bonds, and it was equivalent as if the three bonds had been granted for £100 respective; for the Lords considered, that the bond being one and individual, the importance, as to the interest of the debtor, is the same whether it be granted to one or to divers persons.

*Dirleton, No. 135. p. 56.*

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1671. *December 13.*

JACK *against* JACKS.

No. 53.

In a reduction of an apprising deduced upon a bond of 5,000 merks, objected against the bond, That it was signed by two notaries before three witnesses only. Answered, The bond is in implement of a contract of marriage, and consequently cannot be a deed of great importance, when nothing is contained in the bond but what the party was *ab ante* obliged for. The Lords did find, That if the sum of 5,000 merks, contained in the bond, was stipulated in the contract of marriage,