

No. 32.

Though the act 1579 give authority to notaries to subscribe for a party in case only he cannot subscribe himself, yet a contract was not found null simply upon that head, that the party could write, unless he would also refuse that he gave authority to the notaries to subscribe for him; in which case the command given to the notaries behaved to be instructed.

1608. *December 8.* LITTLEJOHN *against* HEPBURN.

George Littlejohn in the Canongate, as assignee to Oliphant, pursued Hepburn, spouse to Walter Henderson, writer, to hear and see ground of her conjunct fee lands poided. She excepted that the desire should not be granted, because she was infest before the pursuer or his authors in conjunct fee, and so no poiding could be granted to her prejudice. It was answered, that she had consented by subscribing the pursuer's author's charter and contract. She answered, that the contract was subscribed long after the sasine, and so was no real right, and that the sasine was not given upon the charter, which was alleged subscribed by her; *2dly*, She could subscribe herself, and so a notary's subscription of the charter in her name could not hurt her; *3dly*, If she could not have subscribed, it required two notaries, and was only subscribed by one. The Lords ordained her oath to be taken, to supply and try the verity of the notary's subscription at her command.

Haddington, v. 1. No. 1500.

1610. *January 19.* CRAIG *against* COLLISON.

An instrument of one notary made *in anno* 1575 found to be a sufficient assignation to a reversion, albeit the cedent could write. Action sustained against the cautioner in the said instrument, albeit the principal was not called; which assignation under form of instrument was the rather sustained, because it contained a provision, that the assignee should repone the cedent when he should give him 300 merks, which was promised to him in tocher.

Haddington, v. 2. No. 1748.

1610. *March 3.* CAMPBELL *against* BELL.

No. 34.

Found as above.

A charter subscribed by one notary, alleging he had command of a woman, because she affirmed she could not write, or is burdening her conjunct fee lands, may be reduced by her, she offering to prove that she could write herself, and that she was in use to write and subscribe both before and after the date of the said contract.

Haddington, v. 2. No. 1845.