

1623. July 8.

SHERIFF OF CAVERS *against* HENDERSON.

In an action of redemption pursued at the instance of the Sheriff of Cavers, against Henderson, the Lords found a reversion null, which was subscribed by notaries, for the granter of the reversion, and not by the parties' own hand, because the same being made after the act of Parliament in October 1579, it had not four witnesses insert therein, at the usual clause in the end, namely, "Before thir witnesses:" In the which clause the Lords found there should be four witnesses insert, specially designed, that the witnesses may be known, who were present at the subscribing of the reversion; or other writ of importance, so that they found, that the writ should have the whole four witnesses' names, who were present at the subscribing, insert and designed in the body of the writ, otherwise the writ to be null; and this reversion was found null, albeit there were two witnesses insert in the body who were specially designed, and albeit it was subscribed by other two witnesses, by and attour the other two which were insert; and in respect the two subscribing witnesses were not also insert and designed in the body of the writ, nor yet designed by their subscription, the said reversion was not therefore sustained; and because the pursuer thereafter referred the verity of the reversion to the party's oath, he being yet on life, The Lords received the oath of the party to sustain the same, and to supply the foresaid nullity.

Actor, *Nicolson et Belshes.*Clerk, *Hay.**Durie, p. 70.*

No. 94.

Designation
of the wit-
nesses.

See No. 104.

1624. July 27. LADY STANIPATH *against* Her SON'S RELICT, and BAIRNS.

The Laird and Lady Stanipath having assigned to Francis Lyle their son, their right which they had to a certain yearly duty, which was due to them, and to the longest liver of them, for either of their lifetimes, out of some lands; the Laird being dead, and also Francis who was assignee being dead, the Lady pursues the relict of Francis, haver of that assignation, for production thereof, and the bairns of Francis to hear them decerned to repone her against the assignation, and to hear it found, that their son's name, who was made assignee, was but borrowed to their own behoof, and that he promised never to prejudice his father nor his mother in their rights, but to use the assignation to their behoof. There was neither back bond made by the son, nor any adminicle in writ to verify the promise, nor any other thing extant to verify, that the deed was done upon trust or confidence; and both the father, who was one of the cedents, being dead, and also the assignee; yet the Lords took trial thereupon *ex officio*, by examination of the witnesses insert in the assignation, who were all but simple and poor folks, and by examination of the relict of the assignee, who had no interest in the right, but was convened as haver; and upon their delarations, found the trust, and confidence, and promise made by the assign-

No. 95.

The evidence
of instrumen-
tary witness-
es admitted
to ascertain a
trust.See Crawford
No. 62.
p. 12304.
contrary.