

No. 39. 1623. *January.* FOTHERINGHAM and SCRIMZEOUR *against* WATSON.

In an action pursued by ——— Fotheringham and ——— Scrimzeour of Kirktown her spouse, against one Watson, for payment of the sum of 200 merks, conform to his obligation, the Lords found the obligation null, because it was not subscribed by two notaries and four witnesses, conform to the act of Parliament, act 80. Parl. 6, James VI. *in anno* 1579; and found that any thing exceeding £100, of whatsoever quality the parties were, whether poor or rich, was to be reputed a matter of great importance, and came under the act of Parliament; and so this obligation, to produce no action, albeit it was subscribed by two notaries and three witnesses.

Durie, p. 43.

* * Haddington reports this case :

In an action betwixt Fotheringham, daughter to Mr. James Fotheringham, and Watson, Watt, and others, his cautioners, the Lords found a bond of 200 merks subscribed by two notaries and three witnesses null by way of exception, because the act of Parliament requires two notaries and four witnesses necessary in matters of importance; and so found 200 merks a matter of importance,

Haddington, v. 2. No. 2735.

No. 40. 1623. *November 13.* MARSHALL *against* MARSHALL.

An obligation for the precise sum of £100 Scots, was found to be a matter of great importance; and therefore null, being subscribed only by one notary before four witnesses.

Durie.

* * This case is No. 8. p. 6839. *voce* INDIVISIBLE.

1624. *January 23.* M'MORRAN *against* BLACK.

No. 41.
Notaries
must sign
unico contextu.
See No. 46.

Black being obliged to pay yearly a certain duty to M'Morran of Glaspen, conform to a tack passed by way of contract betwixt them thereanent, and the said Black, tacksman, being pursued for payment thereof; the Lords found the tack sufficient to bind the tacksman, albeit it was quarrelled by him as null, because it was a matter of great importance, which, although it was subscribed by two notaries for him, yet ought to be considered, as if it were subscribed only by

one (*quo casu* it would have been null) seeing the same was not subscribed by the two notaries at one time, as it ought, if it had been lawfully done, but at divers times, viz. by the one notary, and before his witnesses at one time; and by the other notary, and before divers witnesses, others than the first, upon another day thereafter; which allegiance, after the Lords inclined to sustain the same, was repelled, because the pursuer replied, and offered to prove, that the tacksmen had entered by virtue of the tack, to the possession of the lands contained in the tack, which he proved by instrument, and in respect thereof the tack was sustained.

Alt. *Lawtie.*

Durie, p. 101.

No. 41.

1628. February 1. LD. HALKERTON *against* KADIE.

A bond of £80 principal, and 40 merks penalty, signed for the party by one notary only, sustained as a matter not of great importance, seeing the penalty was not to be respected.

Durie.

No. 42.

* * This case is No. 3. p. 3426. *voce* DEFORCEMENT.

1630. January 26. ROSS *against* HOME.

In a removing pursued by a compriser, deduced against the liferenter, and fiar of the lands comprised, one of the defenders, in the removing, defending with a disposition of the life-rent, made to him of that land before the decret, whereupon the comprising was deduced; this disposition anterior to the decret was sustained, albeit was not subscribed by two notaries and before four witnesses; for albeit it was constituted by infestment, yet it was not found to be a matter of importance falling under the act of Parliament, seeing it was only the life-rent of a house, which was valued not to be worth of yearly mail, £3 or £4 Scots, being in North Berwick: And sicklike it was sustained, albeit it was quarrelled, as falling under the act of divory, because it was disponed to a conjunct person, viz. the disponer's sister's son, for no just nor competent price, but only bearing to be done for satisfaction of £40, owing by the disponer to the excipient for malt silver, which is not the full price of the life-rent, and is done long after the bond of the debt owing to the pursuer, whereupon he obtained sentence, and whereon he comprised; for albeit his diligence be after the disposition, yet the debt and bond preceded the same, and after that bond no deed could be done by the debtor to prejudice his debt. This allegiance was also repelled, and the disposition sustained.

Durie, p. 485.

No. 43:
A disposition to a life-rent of a house constituted by infestment, was found not a deed of importance, the rent being only 3l. or 4l. Scots.