

1633. *March 21.*Cow, or COLL, *against* CRAIG.

No. 46.

Notaries  
must sign  
*unico contextu.*

One Craig, as heir to his father, being pursued to pay the sum of 600 merks, contained in a contract, wherein his umquhile father was obliged, and a cautioner with him, to pay the same to the pursuer; and he alleging the contract to be null, being subscribed by two notaries and four witnesses, which was not done by them at one time, but was subscribed by one of the notaries in one day, and by another notary seven days thereafter, whereby it could not be reputed as a lawful deed, conform to the act of Parliament, which requires the subscription of two notaries, whereas there being only one at each time, it must be reputed as if there had subscribed only one notary of all; this allegiance was considered by the Lords, as sufficient to brangle the contract; but because the contract was also subscribed by the cautioner's self, who was bound therein, and that the pursuer produced a charter granted by the said umquhile Craig, relative and conform to the contract, of an annual-rent for the said sum, albeit subscribed as the contract was, and so *laborans eodem vitio*, with a sasine upon the charter; and that the pursuer replied, that he had been 20 years in possession of the annual-rent of the said sum, conform to the said writs; therefore the exception was repelled in respect of the reply, which was admitted.

*Act. Barclay.*Clerk, *Gibson.**Durie, p. 681.*

\* \* \* Spottiswood reports this case :

In an action betwixt Coll and Craig, it being alleged against a contract whereupon the action was founded, that it was null as not being subscribed by two notaries and four witnesses, conform to the act of Parliament; at least the two notaries who had subscribed the same did not subscribe at one time, but the one of them six days before the other; and so should be esteemed as if it had been subscribed by one of them allenarly, for they could not be called *connotarii*, not being both present together *in peragendo actu*; the Lords thought this allegiance very considerable, *nam ea est solennium natura ut dividi nequeant, sed uno actu et contextu absolvi debent*, L. 137. D. De Verb. oblig. in principio, if it had not been taken away by a reply, viz. that charter and sasine had followed upon the contract, and 20 years possession; in respect whereof, the Lords sustained the contract, notwithstanding of the alleged nullity.

*Spottiswood, p. 71.*