

No 62. 1664. December 15. CAMPBELL against CAMPBELL.

By contract of marriage betwixt Alexander Campbell and Janet Campbell, the deceased Alexander as principal, and certain persons as cautioners for him, are obliged to pay to the said Janet yearly the sum of L. 80, whereupon she intents action against the cautioners for payment.—It was *alleged*, That the contract *quoad* the cautioners is null, being only subscribed by one notary.—*Answered*, That marriage having followed, it homologates the contract, and supplies the defect of two notaries.—*Replied*, That the subsequent marriage might supply the defect of a necessary solemnity, *quoad* the principal party contractor, but not *quoad* the cautioner; and for this some old practiques were alleged.

THE LORDS found the contract null, *quoad* the cautioners. See WRIT.

Fol. Dic. v. 1. p. 382. Gilmour, No 119. p. 87.

* * * Newbyth reports the same case :

JANET CAMPBELL, relict of umquhile Alexander Campbell, pursues Dougall M'Cullen, and several other persons as representing their fathers, who were cautioners for the said umquhile Alexander Campbell, for a provision to his wife.—It was *alleged* no process, because the sums due being L. 80 yearly, the contract of marriage by which the cautioners were bound, was subscribed only by one notary, and so *quoad* the cautioners, the contract was null upon the act of Parliament.—THE LORDS found no process, and found, That albeit the contract of marriage was valid *quoad* the parties contracted themselves, yet *quoad* the cautioners, the same not being subscribed by two notaries, was null.

1665. January 4.—IN the same cause Campbell *contra* M'Cullen, it was farther *alleged*, That the pursuer offered him to prove that the defuncts gave warrant to two notaries to subscribe for them.—THE LORDS likewise repelled that allegiance, in respect of the act of Parliament; and found it not relevant that the pursuer should prove *per testes insertos*, that the defenders gave command to a single notary to subscribe for them.

Newbyth, MS. p. 14. & 15.

No 63. 1665. June 28. KEIL against SEATON.

A PERSON who in his minority had granted bond, being pursued for the same when he was major, proponed payment, in which he succumbed. This was NOT