

No. 51. these notaries, yet it is written with another ink, and does not appear to be written at the time of the subscriptions, being the hand-writ of him that wrote the body, which mentions to be written by him at Edinburgh, and the subscription is at Newburgh; and because the notaries' subscription must give faith to the body of the writ, and not the body to it. It was answered, that they offer to prove by witnesses insert, that the command was given: It was answered that the command being the most substantial point of the subscription, could not be proved, or supplied by witnesses, for the subscription of the notaries, because the party could not subscribe, signifies nothing without the command of the party, for whom they subscribe, and warrant or command in most ordinary matters is not at all proveable by witnesses.

The Lords found the disposition null, and that the subscription of these two notaries not bearing, that it was by command, could not be supplied by the witnesses insert, unless it had been the subscription of a co-notary subscribing at the same time with a notary, whose subscription bore command. Here it was debated whether the subscriptions of notaries at divers times were sufficient, or if the subscription of a notary who was not authorized by the English, and did forbear to act at that time, were sufficient; but the former vote made these to be undecided, as not necessary, seeing the writ was annulled by the former vote.

*Stair, v. 1. p. 481.*

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1668. *January 16.*

No. 52. ANDERSON, DEAN OF GUILD OF ST. ANDREW'S, *against* JAMES TARBAT.

William Tarbat having granted bond for £300 to his son James and other children, the said bond was reduced at the instance of a creditor, because it was subscribed only by one notary, being a matter of importance; though it was alleged, that it resolved in three several bonds, and it was equivalent as if the three bonds had been granted for £100 respective; for the Lords considered, that the bond being one and individual, the importance, as to the interest of the debtor, is the same whether it be granted to one or to divers persons.

*Dirleton, No. 135. p. 56.*

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1671. *December 13.*

JACK *against* JACKS.

No. 53.

In a reduction of an apprising deduced upon a bond of 5,000 merks, objected against the bond, That it was signed by two notaries before three witnesses only. Answered, The bond is in implement of a contract of marriage, and consequently cannot be a deed of great importance, when nothing is contained in the bond but what the party was *ab ante* obliged for. The Lords did find, That if the sum of 5,000 merks, contained in the bond, was stipulated in the contract of marriage,

that it could not be reduced upon that nullity ; but if it did exceed the provision in the contract, it was null by the act of Parliament, and no better than other bonds so subscribed.

No. 53.

Gosford. Stair.

\* \* This case is No. 103. p. 12975. *voce* PROVISION TO HEIRS AND CHILDREN.

1680. *January.*MAXWELL of Kilbain *against* The EARL of NITHSDALE'S TENANTS.

No. 54.

In the case of Homer Maxwell of Kilbain against the Earl of Nithsdale's tenants, the Lords sustained a sasine, the attestation whereof was only the contracted subscription which a notary used to put to any other inferior kind of instrument, such as the intimation of an assignation, or the like ; viz. ita esse attestor signo et subscriptione his meis manualibus.

In another cause, they found a sasine valid, though it was registered with the notary's name blank, et ego vero notarius publicus ; because the party condescended on him, and so filled it up *ex intervallo*, and abode at the truth of it.

Fountainhall, v. 1. p. 123.

1682. *January 17.*DEWAR *against* BETSON of Kilrie.

No. 55.

Found that when the first notary says *de mandato*, the *co-notarius* need not add the words *de mandato* ; and that a deed is valid though the witnesses subscribing thereto were not designed in the body of the writ.

Harcarse, No. 890. p. 253.

1683. *January 3.*JAMES CLARK *against* The LAIRD of BALGOUNIE.

No. 56.

In the action of reduction and improbation pursued at the instance of James Clark against the Laird of Balgounie, of a contract passed betwixt William Carnegie and his children, it was alleged, that the contract was null, as being subscribed by two notaries, who do not acknowledge that the party could write : And it being answered for Balgounie, that he opposed the subscription of the notaries, bearing the instability of the subscriber's hand, and that by reason of his sickness, he could not write ; the Lords refused to sustain the subscriptions of the contract, unless Balgounie would offer to prove, in fortification of the notaries' sub-