

No 12.

1681. June 27.

COUTS *against* STRAITON.

Found that an assignation is not divisible. The contrary was decided, Hill against Selanders, No 15. p. 6844.

JEAN and ISOBEL COUTS pursue reduction of a pretended assignation granted by them to Arthur Straiton of a bond of 2000 merks, upon this reason, that the assignation being a writ of importance, it is null, not being subscribed by the cedents' names, nor yet by two notaries and four witnesses, conform to the act of Parliament thereanent. The defender *alleged absolvitor*, because the assignation is subscribed by the initial letters of the cedent's name before subscribing witnesses, and is attested by two notaries, bearing, "that the cedents could not otherwise subscribe." *2do*, One notary and two witnesses are sufficient for L. 100, so that there being many cedents, each of their subscriptions would be sufficient to carry the right of L. 100 of the sum assigned; and therefore, seeing initial letters are often times sustained alone, where the subscriber is so accustomed to subscribe, there being witnesses inserted, much more where there are two witnesses and two notaries, though not four witnesses. The pursuer *answered*, That initial letters were never sustained, unless not only the subscribers' custom so to subscribe were proved, but that *de facto* they had subscribed the initial letters; neither can the restriction be sustained in this case, albeit a bond for a greater sum than L. 100 hath been sustained, when restricted to L. 100, not being subscribed by the party, nor by two notaries and four witnesses, but by fewer notaries and witnesses, which cannot be extended to this case where there is a perfected bond, which therefore ought to be transmitted by a perfect conveyance, and so cannot be decerned partly to belong to the assignee, and partly not to belong by the same assignation, which assigneth the whole; and this is singular in one of the cedents, that she was blind, and so was not capable to know to what she set her initial letters.

THE LORDS found there could be no restriction in this case, but that the assignation behoved either to carry the whole sum, or no part of it; but found it relevant that the cedents were accustomed to subscribe initial letters, and especially as to the blind cedent, that she was so accustomed to subscribe after her blindness, to be proved *prout de jure*, and that they did subscribe the initial letters at this assignation, to be proved only by the witnesses inserted; it being of dangerous consequence to carry considerable rights by such subscriptions, which may be easily counterfeited, and can hardly be redargued *comparatione literarum*; and therefore they would sustain no extrinsic witnesses, albeit it was reported that there was only one of the witnesses alive, the assignation being of an old date, and nothing ever following thereupon; but they found that the blind woman being capable to write when she saw, was also capable to make the same letters after she was blind; and was no less capable to know what she subscribed than those who see, and cannot read. See PROOF. WRIT.

*Fol. Dic. v. 1. p. 464. Stair, v. 2. p. 877.*