

No. 56. scriptions, that the party the time of subscribing was sick, and not able to subscribe, and would adstruct the subscription.

P. Falconer, No. 38. p. 21.

* * * Harcarse reports this case :

A party who was in use to write having subscribed an assignation by notaries, who in the notorial attestation did assert, that the cedent was so indisposed that he could not write ; and this assignation being quarrelled as false, in a competition of creditors after the cedent's death ;

The Lords were unwilling to determine the relevancy of the reason against the assignation ; but “ before answer, ordained the assignee to adduce what probation he could, to prove, that the cedent was so sick as he could not subscribe his name.” Here some of the rights assigned were not testable ; and the cedent did not die of that sickness, but subscribed thereafter several other writs.

Harcarse, No. 893. p. 253.

1688. *February 23.* THOMAS WILLIAMSON *against* URQUHART of Newhall.

No. 57:

Thomas Williamson, writer, quarrelling a testament of Urquhart of Newhall's, because it was signed for him by the Minister, and does not bear to have been at the desire and by the mandate of the party ; the Lords found the testament null.

Fountainhall, v. 1. p. 499.

1688. *February.*

SIR RORY M'KENZIE of Findon *against* MARGARET BURNET.

No. 58.

A notary's subscription of a testament not bearing *de mandato*, found null.

Harcarse, No. 897. p. 253.

1695. *December 6.*

ROBERT and WILLIAM ELLIOTS of Lymycleugh and PANCHRIST, *against* JOHN RIDDLE of Hayning.

No. 59.

A marginal note adjected to a deed signed by notaries found null, because

Robert and William Elliots of Lymycleugh and Panchrist pursues John Riddle of Hayning, who had first obtained a decret of the border-commission, finding a bond of cautionry to present Elliot, under the pain of 5000 merks, forfeited, for not producing him to answer to an indictment of theft, and two decreets of the