

No 374.

after so long a time ; and though law gives faith to the instruments of notaries acting in certain cases, where law has determined they should be probative, yet that can never be extended to their actings in such cases as the present ; for that were to extend their faith beyond what law and practice allow them. Holograph writs carry a much stronger proof of their verity than instruments of notaries ; and yet law has cut them off by 20 years prescription ; and this instrument is within a few years of the long prescription.

Replied for the pursuer ; That, in some particular cases, our law gives such instruments entire faith ; as is observed by the Lord Stair, Lib. 4. Tit. 42. § 9., where he takes notice of the particular cases in which they are probative of themselves, and brings in the present case among the rest, in these words ; “ In other cases, when men will not do acts which they are obliged to do, &c. instruments taken thereupon by notaries, having witnesses inserted and required, are probative, which no other witnesses could prove.”

Duplied for the defenders ; That the plain meaning of the Lord Stair's words is, that these facts, which ordinary witnesses could not be admitted to prove, may, in the cases mentioned, be proved by instrumentary witnesses ; which is so far from proving that the bare assertion of a notary is sufficient, that it proves the contrary, *viz.* that though these instruments were recent, they must be supported by the testimony, and not the subscription of the witnesses.

THE LORDS found the instrument not probative of itself, unless it were adnunciated by some document or other probation.

Act. Hall.

Alt. Coult.

Clerk, Mackenzie.

Fol. Dic. v. 2. p. 243. Bruce, v. I. No 111. p. 137.

. See in the case Malvenius against Bailie, No I. p. 583. *voce* APPRENTICE, the offer back of an apprentice, who had eloped, under form of instrument, was not found proved by the instrument itself, but the witnesses and notary were examined thereupon.

S E C T. III.

Instrument of Sasine.

KELL *against* MORISON and THOMSON.

No 375.

IN an action of removing pursued by Janet Kell against Alexander Morison, and Janet Thomson his spouse, the LORDS found the said Janet's sasine null, because it was given by her husband, *propriis manibus*, without a warrant, notwithstanding it was *alleged*, That the said sasine was given to her *tanquam spousæ futuræ et sic intuitu matrimonii*, and that she had been in possession of a great part of the lands contained in the sasine, except the lands thairfrae.—

See No 385.

Fol. Dic. v. 2. p. 245. Kerse, MS. fol. 77.