

1610. *January 10.*SPENCE *against* REID.

No 3.
Found as
above.

SPENCE pursued the Executors of umquhile John Reid to pay the annualrent of eleven merks yearly, of all years since the year 1595, conform to a bond, by the which the said umquhile John Reid, as cautioner for his bother, was bound to have paid to Spence's mother, the sum of 110 merks, before Martinmass 1595; and, failing thereof, to infest her and her heirs in an annualrent of eleven merks yearly, and to pay as well not infest as infest. In the which cause, the LORDS found, that a party bound by an heritable bond, not having any heir, and not being of that quality that he might have any heir, that the party, to whom he was bound, had sufficient action against the defunct's executors, for fulfilling of the said heritable bond. Next, it was excepted, that the bond was null; because it was for an heritable annualrent, and was not subscribed by two notaries and four witnesses, but only by Stephen Ballentine notary, and John Moscrop co-notary, and three witnesses, it being true that Moscrop was no notary, but was hanged for behaving himself as a notary, he not being a notary; albeit, it being provided by act of Parliament 1579, that all writs, importing heritable infestment, shall be subscribed by two notaries, in presence of four famous witnesses, otherwise to be null. Notwithstanding whereof, my Lord Chancellor, President, and the most part of the Lords, sustained the bond, in respect of the smallness of the matter, and that Moscrop, co-notary, was *tentus habitus et reputatus*, albeit there were but three witnesses inserted.

Fol. Dic. v. 1. p. 201. Haddington, MS. No 1739.

No 4.

A sasine within burgh was sustained tho' granted by one who was not town-clerk, and though there was another, in regard the giver was habite and repute town-clerk, and was in use to give sasines.

1615. *July 15.*DOUGLAS *against* CHEESLIE.

IN an action pursued by Geo. Douglas of Bonjedburgh *contra* Marion Cheeslie, the LORDS repelled the exception founded upon the act of Parliament 1567, anent sasines to be given within burgh by the town-clerk, in respect of the reply, that it was offered to be proven that Mr George Douglas was repute and holden to be town-clerk, and in use to give sasines; and that, notwithstanding, they offered them to prove, that there was another town-clerk.

Fol. Dic. v. 1. p. 201. Kerse, MS. fol. 77.

1676. *November 10.*STUART *against* HAY.

No 5.

An execution by a deposed messenger was sustained, he being

THE deceast Francis Hay of Gourdie grants a bond in these terms, ' that his estate being very ancient in the name of Hay, and burdened with debt, for the preservation thereof, he obliges himself not to contract debt, nor to dis-