

thay wer the time of the away-taking ; quia notarius non potest testificari, nisi de his, quæ percipit sensu corporeo ; et valor rei percipitur iudicio intellectus.

No 366.

Balfour, (OF PROBATION BE WRIT.) No 32. p. 368.

1611. December 1. ANSTRUTHER against THOMSON.

IN an action pursued by Roger Anstruther against William Thomson of Wigton, the LORDS refused process, upon an instrument subscribed by two notaries, bearing that the said William Thomson confessed that he sold and disposed to the said Roger his tack of certain lands holden of Lochinvar.

No 367.

Fol. Dic. v. 2. p. 243. Kerse, MS. fol. 255.

* * * Haddington reports this case :

1611. November 29.—IN an action betwixt Anstruther and Watson, in Tunland, founded upon an instrument of two notaries, containing the effect and substance of a contract between the said parties, the LORDS would not sustain the said instrument, because albeit two notaries might lawfully subscribe a contract for a party, that could not write himself, being required by him, yet they might not, by an instrument, bind him. Thereafter the pursuer offered to prove the verity of the tenor of the instrument, which was not of great consequence, by the defender's oath : The LORDS found it relevant.

Haddington, MS. No 2321.

1629. December 19. LAWRIE against MILLER.

A PURSUIT made by the assignee, constituted to the order of redemption by the father, against Graham of Panholls, the cedent, user of the order of redemption, and also the party from whom the lands should have been redeemed, and the depositar, in whose hands the money was consigned, whereupon the lands were redeemable ; after all their deceases the assignee pursues the heir of the depositar, for delivery of the money to him ; in the which action no other party being called, the LORDS sustained the pursuit, and found no necessity to call the heir or executor of the person against whom the order was used, albeit the money was consigned to his use, in respect the pursuer passed from that order, and renounced all right which he had to the land, and all right of reversion *simpliciter*, and was content that the party should bruik the land irredeemably, and pursued only for delivery of the consigned money.

No 368.

An instrument of consignment subscribed by a notary does not prove against the depositary, unless he sign it.

Clerk, *Gibson,*