

DIVISION II.

Single Witness, in what cases sustained.

S E C T. I.

Cedent's oath, if good against the Assignee.

1617. *January 7.*A: *against B.*

No 289.

THE LORDS found a submission null, because it was subscribed only by one notary, it being about the heritable right of an acre of land; and when the truth was referred to the party's oath, the LORDS would not take the oath of the cedent, in prejudice of the assignee. *Item*, the LORDS in the same cause found a decret null for three causes, *conjunctim*; *imo*, Because some of the submitters had not subscribed; *2do*, Because one of the Judges had not subscribed the submission, and yet had subscribed the decret; *3tio*, That the decret bore not that the Judges had received the parties' claims.

Fol. Dic. v. 2. p. 235. Kerse, MS. fol. 180.

1622. *March 16.*CUNNINGHAM *against* CUNNINGHAM.

No 290.

Mr JOHN CUNNINGHAM of Findick being charged to pay, as cautioner for Glengenock, 600 merks to Cunningham of Crawford, assignee to Alexander Cunningham, suspended upon payment made to the cedent, and for proving his reason produced a discharge granted by Alexander Cunningham to him of the said sum. The discharge was impugned as subscribed only by one notary. It was *answered*, That he referred the verity of the command given to the notary to the cedent's oath. It was *replied*, It could not prejudice the assignee by his declaration. THE LORDS, before interlocutor, declared they would receive the cedent's and assignee's oath, and examine the witnesses.

Fol. Dic. v. 2. p. 235. Haddington, MS. No 2615.

The nullity of a discharge, as being subscribed by but one witness, found not suppiable by the creditor's oath in prejudice of his onerous assignee.

1627. *February 15.*CUNNINGHAM *against* ROSSE.

No 291.

IN a suspension of William Cunnighame against John Rosse, who being assignee made by Mr Matthew Crawford, had charged the said William for payment of some money addebtet by him to the cedent, for the price of some

Oath of the cedent to prove payment not good against an onerous assignation.