

and that a notary could not be witness to his own deed, so that this bond came under the said act of Parliament. No. 97.

Act. Aiton & Mowat.

Alt. Cunningham & Primrose.

Clerk, Hay.

Durie, p. 315.

1627. November 21. ROBERTSON against ABERCROMBY.

In an action betwixt Robertson and Abercromby, for payment of the sum of £500, contained in a bond made by Robertson to Anderson, and whereto Anderson had made the said Abercromby assignee; the Lords found, that the bond could produce no action, because in effect it had but one witness inserted therein, and so it was null of the law, for there were only two witnesses inserted therein, whereof Anderson's self was one, and so he being made witness to the bond, conceived in his favours, (which the Lords found could not lawfully be) and there being but another besides him, the bond was found to be as if it had contained only one witness, for he could not be respected as witness, and so the bond was found null; which decision differs not much from the decision immediately preceding here noted, that a notary might not be witness to his own deed.

Clerk, Hay.

Durie, p. 315.

1629. January 29. GIBSON against HOWIE.

A decreet-arbitral being subscribed by one of the Judges, to whom the two parties had submitted, he being one of the four Judges to all whom it was submitted, they agreeing together, and the said Judge having subscribed as notary for both the parties submitters, and also as Judge aforesaid, the same was sustained, seeing it was for a matter of small concernment, viz. 80 merks, and betwixt two friends, which were but poor men, and done in landwart outwith burgh, where notaries are not frequent.

Act. Gibson.

Clerk, Gibson.

Durie, p. 419.

* * Spottiswood reports this case :

One Howie being charged for payment of 80 merks, conform to a decreet-arbitral pronounced between him and one Gibson, he suspended, and also intended reduction thereof, upon this reason, That the decreet was null, in respect that the notary who subscribed the submission for the parties submitters was one

- No. 99. of the arbiters, *in quem fuerat compromissum*, and it cannot stand in law that one man should be both Judge and notary subscriber for the parties; yet the Lords sustained the decret in respect of the meanness of the matter, and that they were but poor parties, and dwelled far in the country where notaries could not be easily had.

Spottiswood, p. 15.

1630. March 11. TOWN OF EDINBURGH *against* TOWN OF LEITH.

No. 100.

A bond of servitude, dated 1398, was not found null for want of witnesses, being sealed and subscribed by the party, and it was not the common practice to adhibit witnesses in these days.

Durie.

* * This case is No. 2. p. 14500. *voce* SERVITUDE.

1631. June 28. FERGUSON *against* CAMPBELL.

No. 101.

An acquittance, although subscribed by the party without witnesses, not sustained, although the user of the acquittance found that the acquittance was truly subscribed by the party who was dead before the heir or executor pursued for the debt; but the Lords ordained the defender either to allege that the acquittance was holograph, or to use some other adminicle to supply the acquittance.

Auchinleck MS. p. 8.

1632. December 1. HUNTER *against* HALLIBURTON.

No. 102.

It being objected, That a submission, and a decret-arbitral following there-upon, wanted witnesses, the objection was repelled, because the submission was signed by the parties and four arbiters; and the blank on the back of the submission, in which the decret was filled up, was signed by the parties, and three of the arbiters, which was sufficient, being only for a sum of money, not exceeding £1000.

Durie.

* * This case is No. 292. p. 11620. *voce* PRESCRIPTION.