

No 58. 1626. July 6. MATTHEW CHEAP *against* AGNES MOWAT.

A CONTRACT of marriage, whereupon marriage followeth, needs not be subscribed with two notaries and four witnesses, conform to the act 80th Parliament 1579.

Spottiswood, (MARRIAGE.) p. 203.

No 59. 1630. December 10. NISBET *against* L. NEWLANDS.

A contract of marriage defective in solemnities, was found homologated by the subsequent marriage.

JANET NISBET being, in her contract of marriage with her first husband called Thomson, provided to a liferent of an 28 shilling land of _____ and according thereto infest therein; after the decease of her said first husband, she contracts marriage with a second husband, and in this second contract of marriage, disposes that liferent right which she had by the first marriage, to that second husband, and to the heirs to be gotten betwixt them. The second husband deceasing, the heir serving of that marriage disposes the right of that liferent to an assignee, who pursues the tenants of these lands for the duties thereof. And the relict compearing *alleged* the contract to be null, because it was only subscribed by one notary; which allegiance was repelled, because that disposition of her liferent, albeit subscribed only by one notary for her, yet was contained in a contract of marriage, whereupon marriage followed, and so taking effect as an homologation of the contract, was not quarrelled for that defect. Neither was it respected that the defender *duplied*, That the marriage could not make that act, anent the disposition of her liferent, to stand good, being an act of a several nature, and not necessary to the marriage, which might have taken effect, albeit that liferent had never been disposed; which the LORDS repelled, and also found it not necessary to take the woman's oath upon the verity of the subscription, and of the command given by her to the notary, to subscribe for her, which the LORDS found not needful, but marriage having followed, and this being done *intuitu*, and in contemplation of the marriage, the same contract was sustained. See WRIT.

Act. Gray.

Alt. —.

Fol. Dic. v. 1. p. 381. Durie, p. 546.

No 60. 1642. February 8. HUNTER and FORBES *against* HUNTERS.

Homologation of a testament was not inferred, although one of the parties

JOHN HUNTER in Edinburgh having four daughters, he married one upon Alexander Forbes, and contracts to him 5000 merks; and before the payment he dies, making after the marriage a testament, wherein he ordered all his four