

No. 47.

1634. *March 22.*OCHILTREE *against* MILLER.

Found, contrary to No. 40. p. 16830. that an obligation for £100 Scots is not a writ of great importance, and therefore it was sustained, though signed but by one notary, before two witnesses.

*Durie.*

\* \* This case is No. 15. p. 3627. *voce* ESCHEAT.

No. 48.

1635. *December 5.*SOUTER *against* CRAMOND.

A disposition of moveables by a tenant to his master, in security and payment of by-gone tack-duties, about 4 or 5,000 merks was sustained, though signed but by one notary.

*Durie.*

\* \* This case is No. 8. p. 3098. *voce* CONSUETUDE.

No. 49.

Found in conformity with Littlejohn *against* Hepburn, No. 32. p. 16828.

1637. *January 31.*VEITCH *against* HORSBURGH.

By a contract betwixt one Horsburgh and the relict of Veitch of Dawick, the lands of ——— were set to her in tack for the duty therein contained; for the payment of the which duty, she being convened for payment of divers years possessed by her, and the said contract being subscribed by two notaries for her, and produced for the ground of the pursuit; she alleged the contract to be null, and not to be obligatory against her, seeing it bears only to be subscribed by two notaries before four witnesses, which, although it be lawful by act of Parliament, where the party cannot write, yet ought not to be authorized in this case where the party can write herself, as she can do, and as ever has been in use to be done by her in all matters, which had necessity of her subscription; for she was very skilled in writing, and she alleged that it was a preparative of an evil example, to bind her by the deed of notaries, who might wrong her against her own will, and to omit the right and ordinary means, which was by her own proper hand writing and subscription. The Lords repelled the allegiance, and sustained the contract, for it might be that the party, although she could write, might have affirmed to the notaries that she could not write, or might possibly be at that time in some distemper or sickness, or might have had some impediment in her hand, which justly might have hindered herself to subscribe, or some such other casual accident, which letted her then to write; so that the Lords found, the subscribing of a writ by a party, by two notaries, before four witnesses, albeit for a party who could

write, was not a ground to take away the contract, the same being truly done by the notaries, the writ never being quarrelled by the party upon falsity, nor denied by her; and the Lords found it not necessary, that the pursuer should be urged to refer to the defender's oath, that she gave command to the notaries to subscribe the contract for her, it not being impunged by her upon that ground, as said is, nor to allege or prove any of the impediments foresaid, which might excuse her not subscription.

Act. Burnet. &amp;

Alt. Craig.

Clerk, Gibson.

*Durie, p. 825.*

No. 49.

1666. June 29.

JANET KID *against* DICKSON.

Janet Kid pursues reduction of a disposition of some tenements in Forfar, made by her father on this ground, that the disposition is subscribed but by one notary and one witness, and the charter by one notary and two witnesses, and so is null by the act of Parliament, requiring two notaries and four witnesses in writs of importance. It was answered, That the tenements being small, the price of one expressed being 200 merks, and the other 300 merks, the foresaid two writs were sufficient, clad with many years possession in the defunct's time, who never challenged the same; *2dly*, They are established by the sasine given *propriis manibus*, conform to the obligation of the disposition and charter by a town-clerk, registrated in the town-books.

The Lords having ordained the defenders to condescend, upon any adminicles they had, for astructing the verity of the subscription, they condescended only on seven years possession, which the Lords found was not sufficient to establish the right without reduction; but if the defender had condescended on 40 years possession, the Lords declared they would hear them dispute, whether that could be sufficient or not.

*Stair, v. 1. p. 384.*

No. 50.

Deed subscribed by one notary and two witnesses reducible.

1667. July 26.

Mr. JOHN PHILIP *against* Mr. JOHN CHEAP.

Mr. John Philip pursues his tenants upon a disposition granted by Michael Philip. Compearance is made for Mr. James Cheap, who apprized from Michael Philip's heir, who alleged that the disposition is null, neither being subscribed by the disponent, nor by two notaries for him, albeit it mention the subscription of three notaries, yet two of them subscribed not at the same time with the third; and neither of these two bear, that they did subscribe at command, but that they subscribed only for Michael Philip, because that he could not subscribe himself; and albeit the body of the writ mention such witnesses to the command given to

No. 51.

A writ subscribed by notaries, where the notaries' docquet bore that they subscribed for the party, but did not mention whether at his command found null.