

1611. *March 6.* ARNOT *against* COUNTESS of ORKNEY.

No. 201. Count of £900 furnished by Sir John Arnot to my Lady being subscribed by her without witnesses, and without my Lord her husband's consent, sustained against them both.

Haddington MS. No. 2180.

*** The like found 25th July, 1676, Campbell against Ld. Abden, No. 97. p. 5879. *voce* HUSBAND AND WIFE.

1623. *January 18.* BOG *against* HEPBURN.

No. 202.

In the action pursued by Bog against Sir Robert Hepburn for a legacy left to her by umquhile Dame ——— Preston his spouse, of the sum of 300 merks, they found that one notary is sufficient to a testament, albeit the inventory and legacies be so great as could not be sustained in one bond, being only subscribed by one notary.

Haddington MS. No. 2725.

1625. *June 30.* A. *against* B.

No. 203.

In an action of registration of a contract of marriage, pursued at the instance of ——— against ———, who was cautioner for one of the parties contractors, the Lords found the contract, so far as concerned the cautioner convened, nowise obligatory against him, because it was not subscribed by two notaries for him, but only by one notary, the same being a matter of importance; and therefore assoilzied the cautioner from registration, &c.

Act. Burnet.

Alt. Davidson.

Clerk, Scot.

Durie, p. 167.

1627. *February 14* PYRONON *against* RAMSAY'S EXECUTORS.

No. 204
A lettersentto
France com-
missioning
wines not sus-
tained to pro-
duce action,
unless proved
to be holo-
graph.—But
see No. 203.
infra.

In an action at the instance of one Pyronon a Frenchman, against the Executors of umquhile Patrick Ramsay, for payment of certain wines sent to the said umquhile Patrick by the pursuer, conform to a letter written and sent by the said Patrick to the said Frenchman, giving him commission to buy the said wines to his use, and to send them to him; the Lords found that the pursuer could not have action upon the said missive letter, containing the said commission, except that he proved that the whole body of the letter was holograph; and found it not suffi-

cient, that the said pursuer offered to prove that the subscription thereof was the said umquhile Patrick's hand writ, except it had been proved also, that the whole body was written by him : Neither was it respected that the pursuer contended, that there was no necessity, that the same should be all holograph, being truly subscribed by him, and that he might cause any other write the same by his inditement, otherwise no writ should have faith betwixt factor and merchant, except that the same were written by the party's own hand, which were a great inconvenience, tending to take away all trade and credit betwixt merchants and factors ; for many times merchants that cannot write well, will direct letters to their factors, and will put to their mark to the letters ; and it were hard that sicklike letters should not be warranted to them that answers them, specially where the wares written for are truly sent and delivered, conform to the desire of the letters, as in this case controverted, where the delivery of the wines written for by the letters and the price whereof was now acclaimed, was offered to be proved by the ticket of entry written in Bourdeaux, and subscribed by the skippers, in whose ships the wine was transported, and by tickets of entry of the same wines in the custom books of Leith, subscribed by the said Patrick Ramsay, and by the obligation given and subscribed also by the said Patrick, obliging him to pay the custom for the said wines, wherein he granted that the same was entered in his name, and to his behoof, all which the pursuer contended, proved the defunct's receipt of the wines, so that there was no necessity to prove the letter holograph. All which was found by the Lords not to be sufficient, to produce this action for the prices of the wines, except it were proved, that the whole letter was holograph, which they found necessary to be proved, otherwise that the pursuer had no action in this process : Also the Lords found that the pursuit made at the stranger's instance, could not be sustained, being pursued in his own name, he not being present, without a procuratory were made by him, and caution were also found *de rata, &c.* which procuratory and caution they ordained should be found *in ingressu litis*, before the defender could be compelled to dispute ; and found it not sufficient that caution was offered before sentence ; or when litiscontestation should be made.

Act. Nicol & Belshes..

Alt. Hope & Lermouth.

Clerk, Gibson.

Durie, p. 273.

1628. January 11.

RULE against AITON.

In an action betwixt Rule and the Laird of Aiton, for payment of £900 contained in a count-book of debursing, given out by the said James Rule pursuer, for the defender, and confessed to be owing to him by the said defender, and subscribed with his hand ; the Lords found the said subscribed count sufficient to produce this action, and to be obligatory against the defender, albeit the same was not subscribed before witnesses, nor had any witnesses inserted therein, as was

No. 205.

A debtor's mere subscription to an act found probative, as he did not deny it was his hand writing.