

No. 282. 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 80th act of Parliament 1579.
Spottiswood. p. 203.

No. 283.

A bond subscribed by two notaries, before three witnesses only, found unchallengeable, in consequence of payment of annual-rent.

1627. November 20. LOCKIE *against* ———.

Lockie pursues a reduction of a bond of 400 merks granted by umquhile Lockie his ——— to ———, against ———, assignees constituted thereto, and having comprised thereon ex hoc capite, that it was subscribed only by notaries for the party, and before three witnesses inserted and subscribing, against the act 1579. Mowat answered, The three inserted and subscribing were a greater solemnity than four inserted, and none subscribing which were sufficient by the act: Farther, the co-notary was a witness, and so made four: Lastly, As a Bailie might be witness in a sasine, so might a co-notary. (Cunningham procurator.) Replied, Oppones the act. Reduces, notwithstanding of the answer. Thereafter answered, Homologated by payment of annual-rent by the granter sundry years. Replied, Non relevant nisi probat. scripto vel juramento partis, and that they declare whilk of time they will use probation. The answer, Scripto vel juramento, which at the first term.

Nicolson MS. No. 20. p. 10.

1628. March 11. MUIR *against* CRAWFORD.

No. 284.

A marriage-contract, informally executed by notaries, was sustained, as marriage followed.

In a suspension by Muir against Crawford, of a decret of transferring of a registrated contract against his father, and transferred in him as heir to his father, by the which contract his father was obliged to pay to Crawford 200 merks for tocher good, obliged to be paid by the said umquhile Muir to the charger, in marriage with one Cunningham, who was sister to Muir's wife, and which was suspended by Muir's heir, in whom as said is, it was transferred, because it being a matter of importance, viz. 200 merks, it was only subscribed by a notary for him, before two witnesses; and the charger opposed his decret standing, and also that it was a contract of marriage, whereupon marriage followed;—the Lords found the letters orderly proceeded, notwithstanding of that reason, seeing it was a contract of marriage, for payment of tocher, whereupon marriage followed; and had no respect to the suspender's reply, whereby he replied, that he was not obliged

in law to the woman contracted, to tocher her, being a stranger to her, she being only his wife's sister, whom no law could compel him to tocher; and therefore he alleged, that the form prescribed by the act of Parliament, *in anno 1579*, concerning two notaries and four witnesses, should be kept; which allegiance was repelled, but the reason in this case especially was, because the contract was first registrated against the defunct in his own life-time, and thereafter was transferred in this suspender, as heir to him, and so there were two decreets thereon standing. *Vide* December 10, 1630, Nisbet against Newlands, No. 287. p. 17016.

Clerk, *Hay*.

Durie, p. 357.

Spottiswood reports this case :

David Crawford having got a decret of transferring against Gilbert Muir as heir to his father, who was obliged in a contract of marriage between the pursuer and Elizabeth Cunningham, for the payment of 200 merks charged upon the said decret, Gilbert suspended upon this reason, That the contract was null, in so far as his unquhile father was obliged therein, because he was not subscribing in it, and only one notary and two witnesses, and so null by the act of Parliament. Answered, That ought to be repelled, *1mo*, In respect of the decret standing, given upon lawful probation; *2do*, It floweth upon a contract of marriage, which is an onerous cause, in respect whereof the strictness of that solemnity ought to be dispensed with. Replied, That his father being but a stranger to the parties, the defect alleged should work in his favours, he having received no benefit by the said contract. The Lords found the letters orderly proceeded.

Spottiswood, p. 203.

1628. *March 12.* WILLIAM DISHINGTON *against* SIR WILLIAM SCOT.

By the act of Parliament 1593, the name of the writer should be inserted in the body of all writs and evidents, otherwise the same are to make no faith in judgment nor outwith. Yet ordinarily before the Lords the party user of the writ is suffered to condescend upon the writer thereof, which is sustained as well as if his name had been inserted therein.

Spottiswood, p. 359.

* * * Lord Kames makes the following observations on this case :

The act 179, Parl. 1593, statutes, " That all writs and evidents shall make special mention in the end thereof, before inserting the witnesses, of the name and de-