

No 8.

own deed, whereupon he himself had taken instruments, and so could not oppose to the same; and for the same reason, they repelled this other allegiance, whereby the defender quarrelled the sasine upon nullity, for not being registered in the clerk of registers books, because that allegiance was not competent, but to a third party, who had a sufficient right in his own person, as is expressed in the act of Parliament, *anno* 1617, cap. 16. which is the ground of the allegiance, far less could the excipient impugn his own right.

In this same process, the LORDS found an obligation of L. 100 null, which was subscribed by a notary and four witnesses, because it was not subscribed by two notaries, and found any writ bearing L. 100, and above, to be a matter of importance, and would not suffer the party to retrench the obligation to any less quantity, inferior to the sum therein expressed. See PROOF. REGISTRATION. WRIT.

Act. *Lermonth.*Alt. *Aiton.*Clerk, *Scott.**Fol. Dic. v. 1. p. 463. Durie, p. 79.*

No 9.

1628. *December 2.*ROBISON *against* JAMIESON.

IN a transferring of a contract betwixt two parties, whereby the one sells some wares to the other, at the price contained in the contract for each stone thereof, and granted him to have received L. 80 in part of that price; this contract being registered, was desired to be transferred in the heir of him, who was obliged for the wares after the contractor's decease. And the defender *alleging* a nullity of the contract, because it was of a matter for above L. 100, which thereby was a matter of importance, and was only subscribed by a notary before three witnesses; this allegiance was repelled, because the pursuer restricted his pursuit to have execution only for the L. 80 confessed to be received thereby; for the which the Lords sustained the pursuit, for delivery of as many of the wares sold by the contract as effeired to that sum received by the conception of the contract, and also because the contract was registered.

Fol. Dic. v. 1. p. 463. Durie, p. 403.

No 10.

1630. *January 22.*MORTON *against* ELLIOT.

MORTON pursues Elliot and her spouse for payment of L. 106 contained in a bond made by her to the charger before she was married. It was *alleged*, the bond was null, for L. 106 was a matter of importance, and the bond was subscribed but by one notary. It was *answered*, That the charger was con-

tent to restrict her charge to L. 100, which the LORDS sustained, and ordained this decision to be observed in the like cases.

No 10.

Fol. Dic. v. 1. p. 463. Auchinleck, MS. p. 143.

. Durie reports the same case.

1629. December 19.—IN a suspension of charges upon a bond of L. 100 of principal sum, and L. 24 of penalty, because the bond was subscribed by the alleged debtor, only by one notary subscribing for him, and three witnesses inserted, and so being null, being a matter of importance, against the act of Parliament and act of Session; and the charger retrenching the sum to L. 100, and passing from the rest, he alleged the bond so retrenched was sufficient. THE LORDS sustained the bond being so retrenched, albeit it was subscribed by one notary, and before three witnesses; for an obligation of that sum might be made effectually, being so subscribed; and so it was found it might be retrenched, albeit the party contended, that it could not be retrenched no more than if it had been once of L. 1000, and retrenched to a lesser sum to make it subsist; which was not respected; but allowed the bond, and found no necessity to take the debtor's oath thereon, who was living.

This action being called 13th January 1630, This decision was ordained to stand, notwithstanding of the act of Session declaring bonds above L. 100 to be matters of importance; and found, That the party might retrench the sum, and that they would permit in like cases the parties to retrench bonds in time coming, when such questions occurred; and here this was the rather done, because the debtor was obliged in the bond to pay the sum at two terms, so that it was respected as if the sum had been owing by two obligations. *Item,* It needed not to be retrenched within L. 100.

Aft. Craig.

Alt. Baird.

Clerk, Gibson.

Durie, p. 476.

1634. March 15.

BROWN against THOMSON.

THE LORDS sustained a discharge for a considerable sum, though signed for the party by one notary only, the user offering to restrict it to L. 100.

No 11.

Fol. Dic. v. 1. p. 463. Durie.

. This case is No 20. p. 3200, voce DEATH-BED.