

1699. February 4. DONALDSON *against* SIMPSON and DONALDSON.

IN a concluded cause, Donaldson *contra* Simpson and Donaldson, being a pursuit for two legacies, one of 600 merks, and the other of 1000 merks, and a discharge being produced of both; it was *objected* against the 600 merks discharge, That it was null, because it was only signed by two notaries and three witnesses, contrary to the 80th act 1579. *Answered*, That act relates only to heritable rights and other writs of importance, and so will not comprehend this discharge. *Replied*, All writs, by our law, above L. 100 Scots are reputed of importance, and the said act has ever been extended to other papers of the same kind with such as are therein expressed. THE LORDS found it null for want of the fourth witness, but sustained it as sufficient to discharge L. 100. Then it was *objected* against the 1000 merks discharge, That it was likewise null, *imo*, Because there was no other instruction of the verity of the debt, but only the executors giving it up in the confirmed testament; which being done to save the quot and exhaust the inventory, is no acknowledgement of the justness of the debt; *2do*, It bears two places, at which the two notaries subscribe for him, viz. the one at Kelso, and the other at Smelholme; whereas they cannot be truly *co-notarii*, unless they be together, and get the mandate at one time, *unico actu et contextu*; and they have signed at several places to hold in the charge of the one notary's coming to the place of the other's residence. THE LORDS thought this last a nullity, but demurred upon the first.

*Fol. Dic. v. 1. p. 463. Fountainhall, v. 2. p. 41.*

1710. February 25.

ALEXANDER ANDERSON of Auchinreoch *against* JAMES COCK.

ALEXANDER ANDERSON of Auchinreoch gave in a protest for remeid of law and appeal against some interlocutors in a cause betwixt him and one James Cock. The case was, Janet Anderson, sister to the said Alexander, had a faculty in her contract of marriage with Cock, to dispose of 1600 merks in case of no bairns; and accordingly she assigns it to her brother; who insisting for payment, it was *objected*, her assignation was null, because, though subscribed by two notaries and four witnesses (in regard she could not write herself) one of the four was not witness to both the notaries' subscriptions; because he expressly adjects these restrictive words to his subscription, "witness to the co-notary's subscription;" which clearly imports he only saw one notary subscribe. *Answered*, The writ bears only one date and place, so it is impossible but he hath seen both the notaries sign; and if the letter S had been added to the word subscription, to put it in the plural number, it would have made

No 13.

A discharge signed by two notaries and only three witnesses, was sustained to the extent of L. 100 Scots.

No 14.

Two notaries subscribed a deed for a person who could not write. One of the witnesses added to his subscription "witness to the co-notary's subscription." The Lords found the writ null except as to L. 100 Scots.