

No 18.

A contract, in which there was a single person on the one side, and a number on the other, was found not obligatory on the part of the single contractor, having been signed only by so many of the others.

1634. *March 25.* LADY EDENHAM *against* SIR JOHN STIRLING, and Others.

IN an action pursued by the Lady Edenham for her conjunct fee against Sir John Stirling, and others of her husband's cautioners; *alleged*, she could seek no more than 2000 merks, because by a contract betwixt her umquhile husband and her on the one part, and a number of the friends of the house taking burden upon them for the debts, on the other part, she was bound to crave no more than 2000 merks if she outlived her husband, as long as the burdens of the house were not relieved. *Replied*, That contract was imperfect, in so far as the Earl of Roxburgh and other two of the friends had never subscribed the same, and nothing had followed upon the said contract, it having remained ever since the making thereof in John Lermont's hands the writer thereof. *Duplied*, Nine or ten of the friends had subscribed the same, *et nihil illi deerat*, by reason that three of them had not subscribed, because they that had subscribed were content to fulfil to her all that was conditioned to be performed to her by the said contract. "THE LORDS found the contract not obligatory on the Lady's part, in respect of the reply."

Fol. Dic. v. I. p. 562. Spottiswood, (CONTRACTS.) p. 72.

No 19.

Although a writ was incomplete, being signed by only one of two notaries, it was found there was no *locus poenitentiae*.

1668. *December 18.* MR ROBERT SWINTON *against* JOHN BROWN.

MARGARET ADINSTON being liferenter of some acres lying about Haddington, and having obtained a decreet of removing against John Brown, did assign her right to Mr Robert Swinton, who having charged thereupon, they did suspend upon this reason, that the said Margaret, during her marriage with James Ferguson, did consent to a tack of the said lands, and did ratify the same before the Bailie of North Berwick; notwithstanding whereof, the letters were found orderly proceeded, because the said Margaret's consent and ratification, was only subscribed by one notary; and likewise the LORDS found, that the verity of her consent could not be made up by her oath, in prejudice of the charger, who was assignee for an onerous cause, albeit he was an under clerk of the Session, and one of the members of the College of Justice, he having acquired for an onerous cause.

Fol. Dic. v. I. p. 561. Gasford, MS. No 25.

. Stair's report of this case is No 11. p. 3412, *voce* DECLARATOR.