

that it could not be reduced upon that nullity ; but if it did exceed the provision in the contract, it was null by the act of Parliament, and no better than other bonds so subscribed.

No. 53.

Gosford. Stair.

* * This case is No. 103. p. 12975. *voce* PROVISION TO HEIRS AND CHILDREN.

1680. *January.*MAXWELL of Kilbain *against* The EARL of NITHSDALE'S TENANTS.

No. 54.

In the case of Homer Maxwell of Kilbain against the Earl of Nithsdale's tenants, the Lords sustained a sasine, the attestation whereof was only the contracted subscription which a notary used to put to any other inferior kind of instrument, such as the intimation of an assignation, or the like ; viz. ita esse attestor signo et subscriptione his meis manualibus.

In another cause, they found a sasine valid, though it was registered with the notary's name blank, et ego vero notarius publicus ; because the party condescended on him, and so filled it up *ex intervallo*, and abode at the truth of it.

Fountainhall, v. 1. p. 123.

1682. *January 17.*DEWAR *against* BETSON of Kilrie.

No. 55.

Found that when the first notary says *de mandato*, the *co-notarius* need not add the words *de mandato* ; and that a deed is valid though the witnesses subscribing thereto were not designed in the body of the writ.

Harcarse, No. 890. p. 253.

1683. *January 3.*JAMES CLARK *against* The LAIRD of BALGOUNIE.

No. 56.

In the action of reduction and improbation pursued at the instance of James Clark against the Laird of Balgounie, of a contract passed betwixt William Carnegie and his children, it was alleged, that the contract was null, as being subscribed by two notaries, who do not acknowledge that the party could write : And it being answered for Balgounie, that he opposed the subscription of the notaries, bearing the instability of the subscriber's hand, and that by reason of his sickness, he could not write ; the Lords refused to sustain the subscriptions of the contract, unless Balgounie would offer to prove, in fortification of the notaries' sub-

No. 56. scriptions, that the party the time of subscribing was sick, and not able to subscribe, and would adstruct the subscription.

P. Falconer, No. 38. p. 21.

* * Harcarse reports this case :

A party who was in use to write having subscribed an assignation by notaries, who in the notorial attestation did assert, that the cedent was so indisposed that he could not write ; and this assignation being quarrelled as false, in a competition of creditors after the cedent's death ;

The Lords were unwilling to determine the relevancy of the reason against the assignation ; but “ before answer, ordained the assignee to adduce what probation he could, to prove, that the cedent was so sick as he could not subscribe his name.” Here some of the rights assigned were not testable ; and the cedent did not die of that sickness, but subscribed thereafter several other writs.

Harcarse, No. 893. p. 253.

1688. February 23. THOMAS WILLIAMSON *against* URQUHART of Newhall.

No. 57:

Thomas Williamson, writer, quarrelling a testament of Urquhart of Newhall's, because it was signed for him by the Minister, and does not bear to have been at the desire and by the mandate of the party ; the Lords found the testament null.

Fountainhall, v. 1. p. 499.

1688. February.

SIR RORY M'KENZIE of Findon *against* MARGARET BURNET.

No. 58.

A notary's subscription of a testament not bearing *de mandato*, found null.

Harcarse, No. 897. p. 253.

1695. December 6.

ROBERT and WILLIAM ELLIOTS of Lymycleugh and PANCHRIST, *against* JOHN RIDDLE of Hayning.

No. 59.

A marginal note adjected to a deed signed by notaries found null, because

Robert and William Elliots of Lymycleugh and Panchrist pursues John Riddle of Hayning, who had first obtained a decret of the border-commission, finding a bond of cautionry to present Elliot, under the pain of 5000 merks, forfeited, for not producing him to answer to an indictment of theft, and two decreets of the