

## SECT. V.

If the Subscription of one of the Obligants be null, or not adhibited.

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1593. June 2.

SCOTTS against JAMESON.

## No. 15.

Found, that two parties being mentioned conjunctly in an obligation, one of them not subscribing, the other was bound only for the half.

IN an action pursued by Barbara Scott, and Robert Scott of \_\_\_\_\_, her husband, for his interest, against one A. B. in Aberdeen, and one Jameson, in Kirkaldy, his cautioner, for payment of certain sums contained in an obligation, as for the price of certain cloth, it was alleged by the said man of Aberdeen, That he should be assoilzied from the summons, because, albeit the obligation bore that he and his colleague had bought such cloth at such a price, yet he was not bound by the words of the obligation to pay the said sum, but only his cautioner, who, by the obligation, became full debtor for the whole sum, and had obtained, for that cause, a discharge of the like sum, which the said cautioner was owing to this defender. Which allegiance the Lords repelled. Farther, he alleged, that he could only be decerned to pay one half of the said sum, because the obligation bore, that he and another man of Aberdeen had bought the said cloth, and he could only be decerned to pay, or to relieve his cautioner, of the half of the said sum. Which allegiance the Lords found relevant. Last, he alleged, that he ought to be assoilzied, because this Barbara Scott, pursuer, being *præposita negotiis mariti*, promised never to crave this defender for his part of the sum, but only the cautioner. It was answered, That she could not make *conditionem viri deteriore* by her paction, unless it had interviened *in ipso actu*, and had been inserted in the obligation. Which reply the Lords admitted, and would not suffer the said exception to be proved by the witnesses inserted in the obligation, for it was thought perilous to receive the witnesses inserted to destroy the obligation whereto they are witnesses.

*Fol. Dic. v. 2. p. 378. Haddington MS. No. 192.*

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1624. February 13.

SINCLAIR of Airth against LAURENCE SINCLAIR of Burgh.

## No. 16.

SINCLAIR of Airth pursued Laurence Sinclair of Burgh for payment to him of 20 angel nobles, as heir to his father, who was bound by his obligation for