

the maker of the bond, conform to his ticket, granting the receipt thereof from the cedent, and obliging him to redeliver the same; and the said debtor alleging the assignation to be null; because, albeit it was subscribed by two notaries, yet the same was not done *unico actu*, as is necessary, but only by one notary before two witnesses to his subscription, and by another notary before other two witnesses to his subscription; and so is not agreeable to the Act of Parliament, being a matter of importance: And it being answered, that the Act of Parliament requires not that there shall be four witnesses present to the subscription of each one of the two notaries, and that writs subscribed by two notaries before two witnesses, to each one of their subscriptions, are null; but, *negative*, declares writs which are not subscribed by two notaries before four witnesses to be null; and which is done to eschew falsehood:—This reply was not discussed; but the allegiance was repelled, because the cedent concurred with the assignee, and assisted the pursuit; which the Lords found supplied any defect alleged in that assignation.

*Vid.* 20th March 1633, Craig *against* Cow.

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1634. July 22. JAMES LADLY *against* The COMMISSARY of DUNKELL.

THE commissary of Dunkell being pursued by Mr James Ladly for payment of an annual-rent of 28 bolls victual, wherein Mr Thomas Abercrombie died infert, and that of divers years bypast; which the pursuer acclaimed as donator to the escheat of Robert Abercromby, son and executor to the said umquhile Mr Thomas, and which were intromitted with by the commissary; who alleging that he had lawfully redeemed the said annual-rent by payment of the principal sum, whereupon the annual-rent was redeemable to the daughter of the said Mr Thomas, who had right thereto by her father, and whereupon she was infert; and the most that can be craved for bygones is only 10 per cent. of the principal sum, and not the victual annual-rent, and prices thereof acclaimed, in respect of the 134th Act of Parliament, 1592, which provides that annual-rents be redeemable after that manner, and that the party can be subject in no higher annual-rent than 10 per cent. This exception was found relevant, albeit the infertment of the annual-rent was before the Act of Parliament: And the Lords found the defender only subject for all bygone years acclaimed, at ten for ilk hundred; and albeit the pursuer replied, that the defender might redeem by payment, and consigning of the principal sum and 10 per cent.; and that the order is sufficient, although no more were consigned; yet that will never hinder the wadsetter to pursue, by way of action, the defender, for payment of the greater quantity whereto his annual-rent extended more than his annual-rent of 10 per cent. as he now does, and has been usually done in the like cases before. This reply was repelled, and the action only sustained for 10 per cent.; but, because this was neither offered nor consigned at the time of the redemption, and that the pursuer had obtained divers decreets against the defender for these bygones, the Lords modified 300 merks of expenses, to be paid by this defender to the pursuer, by and beside the sum whereto the annual-rent, now restricted to 10 per cent., did extend to.

Hay, Clerk. *Vid.* 6th July 1630, Nisbet *against* E. Cassils.

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