

1739. July 4.

SHEIL *against* CROSBIE.

An ordinary having found a deed of importance signed only by one notary and two witnesses, null, and not suppliable by the party's oath, that he had given order to the notary to subscribe for him, the interlocutor was, upon petition and answers, "Altered;" some of the Lords putting it upon this, That in general such nullities were suppliable by oath of party upon the verity of the deed.

And it may be true, that this opinion receives some countenance from certain decisions, whereby it has been found, that the nullity of not designing a witness, and the like, was suppliable by acts of homologation. But the decision did not proceed upon that general ground; for the Lords who spoke for altering, declared their opinion upon the general point for the Ordinary's interlocutor, and their dislike to the said decisions on the point of homologation; but observed, which was the ground of the decision, that this case is very different from that of a party's subscription not duly attested by the legal solemnities; for that a second notary's subscription is not required in way of solemnity, but *in majorem evidenciam*. And therefore, where only one notary subscribes, the want of the second notary's subscription may be supplied by oath of party, or acts of homologation. Before the act 1681, even where a party's subscription was not légally attested, the defect might have been supplied by homologation, or by the party's oath, that he subscribed the deed, though this cannot be admitted since the act 1681; but as the subscription by notaries is no part of the subject of the act 1681, all defects in deeds by notaries are suppliable now, in the same manner as before that act.

Kilkerran, No. 4. p. 605.

1742. November 23.

DUKE of DOUGLAS *against* the Other CREDITORS of LITTLEOIL.

It was objected to an adjudication produced by the Duke in the ranking of the creditors of Littlegil, that the decree of constitution on which the same proceeded had been obtained in absence, for the sums contained in two accounts, fitted between the Marquis of Douglas and his curators on the one part, and Littlegil on the other, in the year 1663, the docquets whereof, were null, in respect they did not design the writer; and that farther, though two witnesses were subscribing, yet neither of them were inserted in the body of the writ, which last defect the creditors contended was not suppliable.

In answer to this, it was insisted on, and with some shew of plausibility, that there was no statute before the year 1681, requiring witnesses' names to be inserted in the body of the writ subscribed by the party; for that all that is required by the

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No. 321.

A writ subscribed only by one notary may be supplied by the party's oath, or by acts of homologation.

No. 322.

If inserting witnesses' names was necessary before the act 1681, and if the omission of the designation of the writer, and names of the witnesses, is suppliable? — Deed subscribed by more than two parties.