No 492. could not prove against my Lord Forbes, who was singular successor, seeing it was not his deed, and wanted the solemnity of the law. The Marquis *answered*, That his acquittance being valid in the beginning could not become invalid *ex post facto* by any subsequent assignation, disposition, or alienation, made by James Curll. The Lords having considered of the dangerous consequence, if parties alleged that writing and subscribing of writs wanting witnesses should make faith in prejudice of singular successors, and that thereby not only might the parties themselves, after that they had made alienations or assignations, for any onerous causes, make private antedated writs with their own hand, wanting witnesses, whereby they could not be improved, but also falsars and perfect writers, skillful in counterfeiting men's hand writing, might so easily falsify a man's writing, as if it might subsist without witnesses, it should never be able to be improved; they found not that acquittance alleged written and subscribed by James Curll, sufficient to verify the suspension against my Lord Forbes, being a singular successor, because it wanted witnesses, and that it was less harm that the Marquis should sustain loss by his own default, who had not provided to himself a perfect and formal security, than that the preparative of such an acquittance should be sustained.

Fol. Dic. v. 2. p. 259. Haddington, MS. No 2318.

*** Kerse mentions this case, No 19. p. 12271.

1629. *February* 12. Lo. Lesly *against* L. Boquhen and L. Pitcaple.

No 493.
A holograph letter discharging a process, found probative of its date.

In a pursuit upon a clause irritant, the Lord Lindores having set a tack of the teinds of certain lands to Boquhen, with express condition, that if he sell any of these lands, whereof he had set the teinds in tack to him, without consent of the said Lord Lindores, in that case the tack to expire, and the right of the said teinds to return to him again; after which tack Boquhen sells the said lands to Pitcaple, and thereafter the Lord Lindores makes the Lord Lesly assignee to the contract, bearing the foresaid clause and provision, and sets him a new tack of the said teinds; whereupon he, as assignee, pursues declarator of the said irritant clause against Boquhen and Pitcaple; who compearing and *alleging*, That the Lord Lindores before the making of the Lord Lesly assignee, by his missive letter all written and subscribed with his own hand, directed to the Laird of Boquhen, consented to the alienation foresaid; and the pursuer *answering*, That the consent could not be proved by a missive letter, which was a writ wanting witnesses, to work against the pursuer as assignee, except that the defender could both qualify, that the same was truly done and delivered to the defender, before the pursuer was made assignee; for albeit it be all the Lord Lindore's writing, yet that will not be enough against the assignee, see-

ing the cedent might write such a letter after his assignation, and therefore the date and delivery thereof ought *positive* to be proved by and beside the letter itself. THE LORDS found the allegeance relevant, notwithstanding of the reply, which was not respected, seeing the letter behoved to bear faith in the date, which it proported, except the pursuer would improve the same, or otherwise take it away. No 493.

Act. ——. Alt. *Baird.* Clerk, *Hay.*
Fol. Dic. v. 2. *p.* 259. *Durie, p.* 424.

1630. *January* 22. M'GILL *against* HUTCHISON.

AN assignee to a bond having wrote to the debtor for payment, the debtor's holograph missive, without witnesses, which in law is equivalent to an intimation, was found probative of its date, so as to prefer the assignee to another creditor, who arrested the sum after the date mentioned in the letter. No 494.

Fol. Dic. v. 2. *p.* 258. *Durie.*

*** This case is No 64. p. 860. *voce* ASSIGNATION.

*** A similar case is reported by Fountainhall, 22d July 1708, Gray against Earl of Selkirk, No 19. p. 4453, *voce* FOREIGN.

1635. *December* 9. EARL of ROTHES *against* LESLIE.

THERE being a submission made betwixt one Leslie and ——, to a certain Judge, who by his decreet-arbitral following thereupon, having decerned the other party to pay to the said Leslie, the sum of eightscore pounds, whereunto he having made the Earl of Rothes a right, who charged for payment of the sum, and the other suspending, that the decree-arbitral, which was inserted in the blank on the back of the submission, was null, because the same wanted witnesses, and so was against the act of Parliament, which required the subscription of the party, and of the witnesses before whom it was subscribed, otherwise that it could not make faith; for by the want of witnesses the means of improbation were taken from the party;—this reason was rejected, and the decree-arbitral sustained, seeing the same was inserted in the blank upon the back of the submission, and bore, that the same was all written and filled up in the same by the judge-arbiter himself, to whom it was submitmitted, and bore to be all his hand writ; likeas the said blank was subscribed by the parties submitters themselves also; and in respect it bore to be holograph, the LORDS found, that there was no necessity to have witnesses inserted therein; neither was it respected that it was alleged, that the argument of holograph might well have place to excuse the not adhibiting of the witnesses, among parties, where any party had written a writ whereby himself might be bound; No 495.
If a writ bear to be holograph, it is a sufficient proof, unless the contrary be proved.