

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 allegiance 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 submitted, 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.

No 495. but it ought not to have a like force, in respect that any other than the party himself might bind another party, but in a legal manner before witnesses, at least it ought to be proved, that the said writ was holograph, if that were found to be sufficient, as the party contended that it was not; which being reasoned and proponed, as a doubt among the LORDS, it was repelled, and no necessity found thereof, and the decree sustained, bearing as said is.

Act. Stuart.

Alt. Baird, &amp; ———.

Clerk, Gibson.

*Fol. Dic. v. 2. p. 257. Durie, p. 784.*

No 496.

1636. January 20. TEMPLE against LADY WHITTINGHAM.

A HOLOGRAPH bond granted by a woman before her marriage, is not good against her husband, because of the hazard of antedating.

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

\* \* This case is No 350. p. 12490.

No 497.

A holograph discharge, without witnesses, tho' granted to a debtor who was no conjunct or confident person, found not probative of its date against an onerous assignee.

1662. January 14. ROBERT DICKIE against THEODORE MONTGOMERY.

ROBERT DICKIE, as assignee constituted by Robert Montgomery, to a contract betwixt Theodore Montgomery and the said Robert, charges Theodore to pay 700 merks; he suspends on this reason, that the debt was discharged before the assignation, or intimation, conform to the discharge produced. The charger *answered*, That the discharge is null, as wanting witnesses. The suspender *replied*, He offered him to prove holograph. The charger *answered*, *non relevat*, against him, a singular successor, especially the question being of the date; for if writs proved holograph, could instruct their own date, no assignee, or any other person using legal diligence by arrestment, apprising, or otherwise, could be secure; but that their cedents and authors might evacuate the right by discharges, or renunciations holograph; and therefore seeing by express act of Parliament writs wanting witnesses are declared null, the exception introduced by custom of holographon, ought not to be extended, especially in relation to the debtor against singular successors. The suspender *alleged*, The inconvenience was also great on the other hand, it being ordinary for masters to give their tenants holograph discharges, and whatever favour necessary assignations by legal diligence might have, yet this is a voluntary assignation.

THE LORDS repelled the reason of suspension and reply, in respect of the answer and duply, and found the holograph discharge not to prove its own date against the assignee, unless the suspender could instruct it by other adminicles.

*Fol. Dic. v. 2. p. 259. Stair, v. 1. p. 81.*