

## WRIT.

1764. November 14. PARK *against* MACKENZIE.

IN a cause decided 29th November 1763, the Lords found, "that a writ, not holograph, and wanting the legal solemnities, was not good in a bargain of selling land; although the person who signed it acknowledged his subscription."

Lord Kames argued, That the sole intention of the solemnities of writs was to prevent forgeries. And, therefore, where, as in this case, the subscription was acknowledged, there was no forgery, so solemnities were useless. But others of the Lords argued, that solemnities were intended not only to prevent forgeries, but also to prevent parties from being surprised into transactions concerning heritage, which were generally of moment, in order to afford all parties a *locus poenitentiae*.

This interlocutor was adhered to. See Ersk., p. 427.

In this case there was a letter offering to sell, holograph, with an acceptance not holograph, but signed before witnesses, but the witnesses were not designed. The acceptor had also signed the offer, but this subscription also was not formally attested. The objection was the same. The Lord Ordinary "had found the defender liable to implement the bargain to the pursuers in terms of the missive and acceptance libelled on." But the Lords altered.

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THOMAS SHEDDON *against* HUGH SPROUL CRAWFORD.

IN an action for making effectual a sale of lands on a minute of sale, Thomas Sheddon *contra* Hugh Sproul Crawford, the objection was, that, in the deed pursued on, neither the writer nor witnesses were designed, and therefore it was null on the Act 1681; and further, was not written upon stamped paper. ANSWERED,—The deed was holograph of Mr Sproul Crawford, who challenged it, and was also homologated by several steps taken by Mr Sheddon, the purchaser, to carry it into execution. The Lord Auchinleck, Ordinary, found the deed null, and the Lords adhered.

In this case Crawford at once owned, not only that he had subscribed the deed, but that he had wrote it. See 4 *New Coll.*, p. 309.