

No. 208. termly but yearly, nor can relate to both the £5. 10s. Sterling, but only the last, to which is adjected, donations, being of strict interpretation: Thirdly, The words foresaid cannot import a promise, but only a declaration of the defender's resolution to continue the same free kindness to his brother; which resolution he may recal at any time: Fourthly, The promise is conditional; *quamdiu se bene gesserit*; whereof the defender can be the only interpreter; and declares, that, since, his brother hath not carried himself so well; the meaning of such words being only this, if so long as in my opinion you carry yourself so, and not according to the opinion of any other. The pursuer to the first defence opposed the letter which is holograph, and albeit the postscript be after the subscription, yet seeing it can have no other construction, than to be done as a part of the letter, and not as other unsubscribed papers, whereanent it is presumed, the writer changed his mind and left them imperfect, and unsubscribed, which cannot be here, seeing the letter was sent. To the second, he opposed the terms of the letter. To the third, alleged *omne verbum de ore fidei cadit in debitum*; and by these words, can be understood nothing else, but a promise, which is ordinarily made in such terms.

The Lords found not the first defence relevant *per se*, but found the remaining defences relevant, and assoilzied.

*Stair, v. 1. p. 127.*

\* \* The like found 10th July 1717, Paterson against Inglis.—(See APPENDIX.)

---

No. 209. 1664. December 15. CAMPBELL against CAMPBELL.

A contract of marriage is not a privileged writ; therefore there being cautioners in a contract of marriage, for payment of the jointure, the contract was found null as to them, because subscribed only by one notary, though the subsequent marriage did homologate the contract, so as to bind the principal parties.

*Gilmour.*

\* \* This case is No. 62. p. 5684. *voce* HOMOLOGATION.

\* \* The like Campbell against M'Cullen, *IBIDEM.*

---

No. 210. 1667. July 4. SCHAW against TENANTS.

A discharge by a proprietor to his tenants sustained, though without witnesses and not holograph.

Schaw pursues certain tenants for their duties, who produced several discharges, against which it was alleged, that the discharges were null, wanting witnesses, and were not written with the discharger's own hand, and so were null by the act of Parliament. It was answered, that custom had introduced several exceptions from the act, as bills of exchange, of the greatest importance, which are valid, being subscribed without witnesses, albeit not holograph; and in like manner the dis-

charges granted to tenants, which by long custom, through all the kingdom, use only to be subscribed by the landlords, without witnesses, and written with another hand. No. 210.

The Lords sustained the discharges, and would not put the tenants to prove, that they were truly subscribed, unless they were offered to be improved; in which case, though the indirect manner was wanting, they might be improved, by comparison of subscriptions, and other adminicles, wherein less would serve than in other improbations.

*Stair, v. 1. p. 469.*

\* \* \* The like found 24th March 1685, Glendinning against Glendinning No. 67. p. 9213. *voce* MUTUAL CONTRACT.

1667. July 27. PRESTON *against* SCOT.

A discharge by a master to his tenant is sufficient, though neither holograph nor having witnesses. It is not so where the discharges are granted by an annual-renter to an heritor.—See No. 21. p. 6322. and No. 7. 7181.

No. 211.

*Stair.*

This case is No. 63. p. 11397. *voce* PRESUMPTION.

1671. February 28. EARL of NORTHESK *against* VISCOUNT of STORMONT.

The Earl of Northesk pursues the Viscount of Stormont on this ground, that he having sent £100 Sterling to London, to the umquhile Viscount of Stormont, to be employed for household furniture, the most part thereof was not employed, and for instructing his libel, produces several missive letters of the Viscount's, one holograph, another having an holograph postscript, and a third written with another hand, which did state the account, and acknowledged the debt. It was alleged for the defender, that the only letter which had any special probation in it, was the last, which is not holograph. It was answered, that the subject matter being a sum sent for furniture, which uses not to be redacted in writ, the Viscount's letter subscribed by him, though not holograph, is sufficient to prove, for bills of exchange so subscribed, or letters among merchants are sufficient; and this letter being amongst noble persons in such a small particular, which requires not ordinarily writ, must be of the same force, especially seeing there are also produced two other missives not controverted, which *comparatione literarum*, are clearly the same with this letter in question.

No. 212.

It being libelled, That 100*l.* had been sent to the defender to buy furniture, and that most of the sum was not bestowed, and therefore being craved repetition; a missive letter, though not holograph, was sustained as a sufficient instruction of the facts.

The Lords found that this letter, though not holograph, was a sufficient instruc-