

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.

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.

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

No. 211.

No. 212.

It being libelled, That 100l. 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.

No. 212. tion, having compared the same with the other not controverted subscriptions; the pursuer making faith, that this is the same letter which he received from the deceased Viscount, his servant or messenger.

Stair, v. 1. p. 728.

No. 213.

1674. November 7. BOYD *against* STORIE.

Discharges by a master to his tenants sustained against him, though neither holograph nor having witnesses.

Dirleton. Stair.

* * This case is No. 297. p. 12456. *voce* PROOF.

No. 214.

A commission from one merchant to another sustained, though subscribed only by initials without witnesses.

1676 January 11. THOMSON *against* CRICHTON.

Patrick Crichton having delivered certain goods to Francis Thomson, who was bound to Bourdeaux, gave him commission to sell them, and to return tobacco and wine with the product; but Francis having gone to Ostend Patrick sent him a second commission, to sell his goods, and to return such goods as he thought would be most profitable in Scotland, and Francis having loaded several goods at Ostend, sent them home, in a Dutch ship to Scotland, and came himself another way. The ship having arrived before Francis' return, his wife did deliver a part of the goods to Patrick Crichton, as the product of his goods. The said Francis Thomson, after his return, pursues the said Patrick Crichton for delivery of the goods, which he had unwarrantably gotten from his wife, pretending that they were the return of his own goods, before the Dean of Guild of Edinburgh, and obtained a decret. Patrick Crichton suspends, and alleges the decret was null, wanting probation, there being nothing to instruct the commission sent the charger at Ostend, but a paper subscribed only with the initial letters, *P. C.* without witnesses. And though bills of exchange amongst merchants are used to be sustained without witnesses by the common custom of nations; yet they were never sustained by initial letters only; *2do*, The ground of the decret is, that by the second commission Francis Thomson bought Holland and Damask, with the product of the suspender's money, and that the same was taken by violence, by a Dutch privateer; and there was nothing adduced to prove the same, but an attest of the Dutch skipper and mariners, which could not prove, unless they had deponed judicially as witnesses; *3tio*, There is nothing to prove that the product of the suspender's goods was the Holland and Damask, but the charger's assertion, whereby he would impute the loss of that parcel, taken by the privateer, to the suspender only, his goods being safe in the same cargo, which cannot be allowed, unless it were instructed by