

No. 225. *temporis* which requires a more formal settlement. But after all it may be argued, That an obligation by one officer to another, for the value of his commission, assigning to the pay of the regiment, would be effectual without writer's name and witnesses, to make the buyer liable personally, if he uplifted the pay after the assignation, though never intimated;—and how can the Marquis pretend exemption from warrandice from fact and deed, after he hath uplifted the money destined for the pursuers payment? *2do*, It cannot be controverted, without cavilling, That a writ of this tenor, whereby the granter becomes obliged to all persons who shall advance money upon the faith thereof, is of the nature of a letter of credit; though it be not a formal letter of credit; and by the by, our custom knows no fixed form or tenor of a letter of credit. Is there any thing more usual, than to give credit by missive letters or upon any emergent occasion? And the variety of human affairs makes it simply impossible to reduce letters of credit into any certain form; since credit is desired and given *pro re nata* according to the present exigency,

*Forbes, p. 577.*

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1714. January 27. LESLY *against* MILLERS in Rosemarkie.

No. 226.

A receipt, subjoined to an account, probative, though wanting writer's name and witnesses.

In a process at the instance of John Lesly as executor confirmed to Abraham Lesly of Findrassie, against John and Hugh Millers, for payment of 152 bolls 2 firlots of bear sold by the said Abraham Lesly to the defenders, conform to a receipt subjoined to a particular account, bearing the tenants names from whom the victual was received, the Lords sustained the receipt as probative, though wanting writer's name and witnesses, being *in re mercatoria*; and found the defenders liable for the ordinary prices bear gave in that place of the country, when the bargain was made; albeit it was alleged by the defenders, that the price should be regulated by the fiars as the only standard when a certain price is not pactioned; because, though the fiars might be the rule betwixt master and tenant, when their farms are not demanded in due time, yet merchants are presumed to contract according to the current prices of the country where the bargain is made.

*Forbes MS.*

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1728. February 22. STRACHAN *against* FARQUHARSON:

No. 227.

It was found, That a letter, not being holograph, was not sufficient to infer an obligation upon the subscriber, though it related to the tocher of a married child, and was insisted upon as coming in place of a contract of marriage, which is favourable. See APPENDIX.

*Fol. Dic. v. 2. p. 546.*