

the purchaser would be entitled to a proportional abatement, as the rent that should be found due should bear to the proven rental of it.

No. 19. 1752, Nov. 15. THOMAS AND ROBERT DUNCAN *against* DUNCAN.

BARRON set a sub-tack of five years to Thomas and Robert Duncan by mutual missive letters, but Barron's letter was not holograph; and the Duncans limed the ground and possessed for a year or two; and then Barron pursued removing in the Sheriff-Court and obtained decret and ejected. The case was brought before us by reduction, and the question was, Whether a tack for five years could be let by a missive letter not holograph but whereof the subscription was acknowledged? Woodhall had found that it could only subsist for one year. The President said he was of the opinion of the interlocutor, which occasioned the Judges giving their opinions, at least several of them at some length. Kilkerran and I distinguished betwixt solemn writs and missive letters. The solemnities of the first are regulated by statute, and they are declared null if these solemnities are not observed. Missive letters are regulated by no statute, but have the authority of custom. Writings that bear to be holograph are probative, unless disproved; but holograph missive letters are not probative, because they do not bear it, unless holograph be proved, which may be done *comparatione*, even after the writer's death. But missive letters not holograph do not prove, and there is no way to prove the subscription but by acknowledgment of the subscriber; but neither the one nor the other are null; and there is no reason why a missive not holograph, whereof the subscription is acknowledged, should not be as binding as a holograph missive when proved. Kilkerran mentioned sundry precedents that I did not distinctly hear, and I mentioned one from my quarto manuscript in July 1726, (not extant) betwixt Sir John Gordon of Park and the relict and children of Northlesly, where the question was touching her conveying her liferent right in lands. At last the President said he was always of our opinion, but only had forgot the terms of Woodhall's interlocutor. So we unanimously reduced the Sheriff's decret, and ordered the petitioner to be repossessed, and found expenses due.

No. 20. 1754, March 9. ROBERTSON *against* SPALDING of Ashintully.

See Note of No. 8, *voce* REMOVING.

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### TAILZIE.

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No. 1. 1735, July 9. BAILIE *against* CARMICHAEL of Mauldsly.

FOUND the debts do affect the tailzied estate.

No. 2. 1735, Jan. 21. CRAIG, &c. *against* DAUGHTERS OF CRAIG.

See Note of No. 5, *voce* PROCESS.