

his livelihood. And the reason why such letters are probative *in re mercatoria*, is founded not only upon the favour of commerce, but likewise because it would be detrimental to society, if, in the common dealings of life, too many solemnities were required.

Replied: The consent of parties contracting must be declared in such a manner as that it can be proved according to the rules of law; and a cautionary obligation for no less than 1000 merks, such as this is pretended to be, is certainly a matter of considerable importance, and therefore ought to be so executed as to be probative in law for any sum exceeding £100 Scots, that being always deemed a matter of importance. As to the argument, That if Woodhead had verbally desired Abbotshaugh to furnish the bear, he would have been liable, it was observed, that the same could only be proveable by Woodhead's oath; and the question here is, Whether this letter, not being holograph, is probative against him as to the contents thereof? And it being so easy to impose on persons, by getting their names to a letter, without reading it, the law has justly required certain solemnities to writs inferring obligations of importance, without which they are not regarded; thus a contract of sale would not be regarded, though signed by the parties, unless the solemnity required by law were observed; and though one may bind himself by a missive, which requires no solemnities, yet it must at least be holograph, otherwise it is not regarded. See December 22, 1710, Gordon, (Sect. 11. *h. t.*) And it is a mistake to say, that this letter should be considered as *in re mercatoria*, because it relates to the sale of a parcel of bear; for the only reason why sometimes letters amongst merchants are regarded, though not holograph, is, because of the custom among merchants, who, as they are very exact in their correspondence, so they keep regular books, in which are entered all their transactions, and copies of all their letters; whereby, if any question should arise as to the contents of their letters, their books are of great authority in supporting them; and it is only upon that account that the greater faith is shown to such letters among merchants; but it would be of dangerous consequence to sustain in general such letters as probative, when they are not holograph.

The Lords found the letter obligatory.

*C. Home, No. 137. p. 235.*

1742. December 12.

GRIZZEL WILLIAMSON *against* WALTER WILLIAMSON.

The pursuer brought a process against her brother for payment of an heritable bond granted to her by her father. Objected, The bond is null, being written on three pages, and only the last signed; whereas every page, by the 15th act, 6th Sess. K. William, ought to have been signed. Answered: This case does not fall under the act; *Imo*, Because it is holograph of the granter; so that here the reason of the law ceases, as there could be no danger in foisting in additional

No. 171.

No. 172.

Objection to a holograph bond, consisting of three pages, that it was only signed on the last page, repell- ed.

No. 172. clauses ; the preventing which was the design of the law ; *2do*, Because the act plainly regards writings written upon several sheets or pieces of paper joined together ; *3tio*, There is no statutory nullity introduced ; it does indeed give the aid of the law to writings, written and subscribed in the manner there directed ; but does by no means declare papers, written and subscribed after a different manner, void and null ; no, it leaves the matter where it was, *scil.* to be determined by the rules of law which would have taken place as if no such act had been made.

Replied : The statute is plain, and the nullity falls expressly under it ; for, by it, any person may choose whether he will have his security written sheet or book-ways ; provided, if they be written book-ways, every page be marked by their number, and signed, as the margins were formerly when battered ; and the last page make mention how many pages are therein contained : And these writs, marked and signed, as said is, are declared to be as valid and formal as if written on several sheets battered and signed on the margin. Now, in the present case, the writ founded on is neither numbered on the pages, nor makes any mention in the last page of how many it consists, which is directly without the provision of the statute ; and its being holograph will not supply the defect, seeing, according to that argument, a holograph writ without any subscription is valid, which would be too great a stretch. And as to the reason given for the law, viz. to prevent foisting in of sheets and clauses, it was answered, That it might have consisted of more sheets than one, for ought appears, which there is always ground to suspect where a writ wants the essentials of the law.

Duplied : The act plainly regards only writings that are composed of different sheets ; and the provisions in it are nowise calculated for a holograph writing, consisting of a single sheet ; and that it might have consisted of more, is plainly impossible from ocular inspection, and the natural and regular succession of every clause.

The Lords, in respect that not only the writ is holograph, but that it appears all written *unico contextu*, and that there is no suspicion of any sort against the deed, repelled the objection.

*C. Home, No. 219. p. 361.*

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1743. June 17.

JOHN CHRISTIE Tenant in Callinch, *against* ANDREW TRAIL.

No. 173.

Discharge, if it is required to be on stamped paper.

The charger being creditor to the suspender by bill, of date the 26th November, 1739, charged him for payment, who suspended on this ground, That the bill charged on was comprehended under a general discharge granted by the charger to him the 14th June, 1740, containing " a receipt of payment of all accounts, bonds, bills, clags, and claims, that ever were betwixt them, preceding the date of the discharge."