No. 233. Pleaded in a reclaiming bill: Blair having purchased the debenture from Crawfurd in the way of trade, is not concerned with any demands the indorser might have upon him.

Answered, Blair got the debenture, as he has declared, in security of a debt, and was only to give credit for it when recovered; so considering it as a bill of exchange, he is not entitled to take it free of objections that might lie against his author; neither is this privilege competent upon bills that have lain over without negotiation; but indeed this matter ought not to be judged by the rules which apply to indorsations of bills, but those of assignations of debts, whereby the assignee is subject to all objections lying against the cedent.

The Lords, 7th November 1749, adhered.

On another bill and answers, observed, Recourse was not due as on a bill of exchange, but the claim was as it would lie against a cedent, who had himself received part of the debt assigned; which would not lie unless the assignation were onerous, and there was no presumption Crawford was here an onerous assignee.

The Lords again adhered.

Act. *Wedderburn, et Lockhart.* Alt. *R. Craigie et D. Græme.*

D. Facloner, v. 2. p. 136.

1752. *November 15.* DUNCAN *against* BARRON.

No. 234.

A location of land for five years was executed by mutual missives, and possession followed. These missives, though not holograph, were found sufficient to protect the tenant in his possession.

A location of land for five years was executed by mutual missives signed by the parties, but not holograph. The tacksman was put in possession. But after possessing a year, he was turned out by decreet of the Sheriff, upon this ground, that a missive letter not holograph, cannot support a tack longer than one year.

In the reduction of this decreet, *Elchies* observed, That missive letters are established by custom, and are not subjected to the regulations of the act 1681; that holograph letters are good by custom only; and that a letter, of which the subscription is acknowleged, affords legal evidence equal to a holograph writing. It was Drummore's opinion, That possession upon a tack null upon the act 1681, is a homologation which secures the tacksman in his possession. And accordingly the Lords sustained the reasons of reduction, and found "That the pursuer ought to be reponed to his possession; and expenses were found due."

Writ is an essential solemnity in transferring land-property; and wherever writ is necessary as a solemnity, it must be formal, according to the law of the place. But a man may become bound to dispone land, or to grant a tack, without a formal writing, and indeed without any writing at all. It is true, that till a writing be executed, there is *locus pœnitentiæ*. But any probative writing is sufficient to bar repentance. A missive letter, though not holograph, is good evidence of the promise, where the subscription is acknowledged. The action to dispone or to grant a tack is founded on the promise: The letter is good evidence of the promise; and has the effect to bar repentance.

No. 234.

But here we need not go so far. A tenant in possession without writ, may be removed by a warning any year. But even a verbal agreement for a longer possession, ought to be effectual to found a defence against a removing, though it may not be sufficient to found an action for attaining the possession. In *pactis liberatoriis*, there is no place for repentance. It may be true, that such agreement cannot be proved by witnesses, but it may be proved by writ; and a letter where the subscription is acknowledged is good evidence.

Sel. Dec. No. 21. p. 24.

*** See the report of this case from the Faculty Collection, No. 25. p. 15177. *voce* TACK.

1765. *June* 27. BUCHANNAN *against* DUNCAN.

No. 235.
Bill of exchange accepted by two notaries for the party, without witnesses, sustained.

An action was brought for payment of a bill for 300 merks, accepted by two notaries for the party, now deceased, their subscription not being attested by witnesses.

Objected by the defender: 1st, A bill of exchange cannot be accepted by notaries for the party; 2*d*, The subscription of notaries can, in no case, be sustained without witnesses.

Answered for the pursuer: 1st, A bill, signed by a notary for the party, was sustained, 28th June 1737, Dinwoodie, No. 22. p. 1419; 2*d*, From the favour of commerce, bills are exempted from the solemnities required in other deeds; and, as they may be subscribed by notaries, as well as other writings, so the subscription of the notary, coming in place of the subscription of the party, witnesses are not required to support a bill subscribed by notaries, more than they are required, when the bill is subscribed by the party himself.

Replied: In the case of Dinwoodie, the bill was sustained in respect of the acknowledgment of the acceptor, who was alive, and did not deny that he had authorised the notary to sign for him. And a bill of exchange, subscribed by notaries, cannot be sustained, without such an acknowledgment; for in all deeds subscribed by notaries, the writer and witnesses must be inserted in the deed; but this cannot be done in bills of exchange, which are not excepted from the common rule, either by the statute law, or by any lawyer who has treated of the subject.

The Lords "sustained the objection to the bill in question, that it is void as being signed only by two notaries, without witnesses; and, therefore, assoilzied the defender, and decerned." See No. 52. p. 1451.

Act. *James Dundas.* Alt. *John Dalrymple.* Clerk, *Ross.* Reporter, *Auchinleck.*

G. F. *Fac. Coll. No. 12. p. 220.*