

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.

No. 234.

*Sed. Dec. No. 21. p. 24.*

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

1765. June 27.

BUCHANAN *against* DUNCAN.

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; 2d, 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; 2d, 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.*

VOL. XXXVIII.

92 T

No. 235.

Bill of exchange accepted by two notaries for the party, without witnesses, sustained.