

No. 181. a subscription ; it was meant, that deeds to which these solemnities are requisite, should be executed in a deliberate manner, and before witnesses, whereby fraudulent designs might be prevented, or at least afterwards brought to light. The objection, therefore, remains, though the subscription is not denied ; and this doctrine is supported by the latest judgments of the Court ; M'Kenzie against Park, 15th November, 1764, (Not reported ;) Crichton and Dow against Syme, 22d July, 1772, (Sect. 11. *h. t.*)

The Lord Ordinary pronounced the following interlocutor : “ As it stands acknowledged on the part of the defender, that the subscription to said letter is his true subscription, repels the defence pleaded against said letter, as neither probative nor obligatory, in respect of its not being holograph, nor having any of the solemnities required by the statute 1681. Finds, that, as the letter is dated at London, where both pursuer and defender did reside at the time, and as it stands confessed, that the subscription to said letter is the defender's true subscription, finds, that the statute is out of the case. And, *separatim*, finds, that, supposing the statute to apply, the defender's acknowledgment of the subscription to said letter being his true subscription, is available to render said letter both probative and obligatory ; and, therefore, upon these grounds, finds the defender liable to relieve the pursuer of the two bills referred to in said letter.”

The Court “ adhered to this interlocutor ” on advising a reclaiming petition and answers.

Lord Ordinary, *Covington.* Act. *W. Stewart.* Alt. *Crosbie.* Clerk, *Menzies.*
Fac. Coll. No. 56. p. 100.

1787. February 27. MARY ROLLO against JAMES REID.

No. 182.

Missive letters must be stamped in virtue of the act 23d Geo. III. C. 58.

These parties having subscribed mutual missives respecting the sale of a house, Reid endeavoured to avail himself of the writings not being stamped, as a legal objection to the validity of the agreement.

Mary Rollo, therefore, brought an action in the Court of Session, in which she Pleaded : The statutes preceding the 23d of his present Majesty are only applicable to writings importing an immediate conveyance of land, or to “ indentures, leases, bonds, or deeds ; ” and so cannot be understood to extend to documents of a less formal nature than those of which particular mention is made. In practice, accordingly, no stamp-duty has been hitherto required with regard to missive letters, and other writings of the same sort.

It is true, that the statute 23d of his present Majesty is somewhat more comprehensive, extending “ to all agreements, whether they shall only be the evidence of the contract, or obligatory on the parties as a written instrument.” But even under this description missive letters cannot be thought to be included. Taken by themselves, they are not obligatory, each separate missive being of the nature

of an offer, which may be afterwards departed from; and as little can they be viewed as the evidence of an agreement concerning lands. These must be transferred by writings of a quite different form, and for which a separate stamp-duty must be paid. No. 182.

Answered: It was to prevent an evasion of the stamp-duties, by the use of missive letters, instead of more formal writings, that the statute of Geo. III. was chiefly intended. And it is of no consequence, that the deeds to be afterwards executed, in order to the complete fulfilment of the bargain, must also be stamped. The same thing occurs with regard to minutes of sale, and many other writings, which, though not importing the immediate constitution of any right, must nevertheless be executed on stamped paper.

The Lord Ordinary sustained the defences; and his judgment, after advising a reclaiming petition and answers, was affirmed by the Court.

The missives having been afterwards stamped, it was argued for the defender, that as this had not been done within three weeks after the execution of the writings, it could not validate the agreement, the statute having provided, "That no memorandum or agreement should be deemed to be void, in case the same were stamped at the head office, or the said duty shall be paid thereon, and a receipt given for the same by the proper officer, twenty-one days after the same has been entered into."

This plea was, however, unanimously over-ruled; the purpose of the clause above recited evidently being, to enable the parties at any time within the period specified in the statute, to get the deeds stamped, without being liable in any penalty.

"The Lords found the defender obliged to fulfil the bargain."

Lord Ordinary, *Hales*. Act. *Wight*. Alt. *Geo. Wallace*. Clerk, *Menzies*.

C.

Fac. Coll. No. 326. p. 500.

1789. December 4. LAMONT against LAMONT'S CREDITORS.

Found that a deed, written on unstamped paper, may be stamped, even after an adjudication has been deduced upon it.

No. 183.

Fac. Coll.

* * * This case is No. 61. p. 5494. *voce* HERITABLE AND MOVEABLE.