

No 495. but it ought not to have a like force, in respect that any other than the party himself might bind another party, but in a legal manner before witnesses, at least it ought to be proved, that the said writ was holograph, if that were found to be sufficient, as the party contended that it was not; which being reasoned and proponed, as a doubt among the LORDS, it was repelled, and no necessity found thereof, and the decree sustained, bearing as said is.

Act. Stuart.

Alt. Baird, & ———.

Clerk, Gibson.

Fol. Dic. v. 2. p. 257. Durie, p. 784.

No 496.

1636. January 20. TEMPLE against LADY WHITTINGHAM.

A HOLOGRAPH bond granted by a woman before her marriage, is not good against her husband, because of the hazard of antedating.

Fol. Dic. v. 2. p. 258. Durie.

* * This case is No 350. p. 12490.

No 497.

A holograph discharge, without witnesses, tho' granted to a debtor who was no conjunct or confident person, found not probative of its date against an onerous assignee.

1662. January 14. ROBERT DICKIE against THEODORE MONTGOMERY.

ROBERT DICKIE, as assignee constituted by Robert Montgomery, to a contract betwixt Theodore Montgomery and the said Robert, charges Theodore to pay 700 merks; he suspends on this reason, that the debt was discharged before the assignation, or intimation, conform to the discharge produced. The charger *answered*, That the discharge is null, as wanting witnesses. The suspender *replied*, He offered him to prove holograph. The charger *answered*, *non relevat*, against him, a singular successor, especially the question being of the date; for if writs proved holograph, could instruct their own date, no assignee, or any other person using legal diligence by arrestment, apprising, or otherwise, could be secure; but that their cedents and authors might evacuate the right by discharges, or renunciations holograph; and therefore seeing by express act of Parliament writs wanting witnesses are declared null, the exception introduced by custom of holographon, ought not to be extended, especially in relation to the debtor against singular successors. The suspender *alleged*, The inconvenience was also great on the other hand, it being ordinary for masters to give their tenants holograph discharges, and whatever favour necessary assignations by legal diligence might have, yet this is a voluntary assignation.

THE LORDS repelled the reason of suspension and reply, in respect of the answer and duply, and found the holograph discharge not to prove its own date against the assignee, unless the suspender could instruct it by other adminicles.

Fol. Dic. v. 2. p. 259. Stair, v. 1. p. 81.