

No. 208. termly but yearly, nor can relate to both the £5. 10s. Sterling, but only the last, to which is adjected, donations, being of strict interpretation: Thirdly, The words foresaid cannot import a promise, but only a declaration of the defender's resolution to continue the same free kindness to his brother; which resolution he may recal at any time: Fourthly, The promise is conditional; *quamdiu se bene gesserit*; whereof the defender can be the only interpreter; and declares, that, since, his brother hath not carried himself so well; the meaning of such words being only this, if so long as in my opinion you carry yourself so, and not according to the opinion of any other. The pursuer to the first defence opposed the letter which is holograph, and albeit the postscript be after the subscription, yet seeing it can have no other construction, than to be done as a part of the letter, and not as other unsubscribed papers, whereanent it is presumed, the writer changed his mind and left them imperfect, and unsubscribed, which cannot be here, seeing the letter was sent. To the second, he opposed the terms of the letter. To the third, alleged *omne verbum de ore fidei cadit in debitum*; and by these words, can be understood nothing else, but a promise, which is ordinarily made in such terms.

The Lords found not the first defence relevant *per se*, but found the remaining defences relevant, and assoilzied.

*Stair, v. 1. p. 127.*

\* \* The like found 10th July 1717, Paterson against Inglis.—(See APPENDIX.)

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No. 209. 1664. December 15. CAMPBELL against CAMPBELL.

A contract of marriage is not a privileged writ; therefore there being cautioners in a contract of marriage, for payment of the jointure, the contract was found null as to them, because subscribed only by one notary, though the subsequent marriage did homologate the contract, so as to bind the principal parties.

*Gilmour.*

\* \* This case is No. 62. p. 5684. *voce* HOMOLOGATION.

\* \* The like Campbell against M'Cullen, *IBIDEM.*

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No. 210. 1667. July 4. SCHAW against TENANTS.

A discharge by a proprietor to his tenants sustained, though without witnesses and not holograph.

Schaw pursues certain tenants for their duties, who produced several discharges, against which it was alleged, that the discharges were null, wanting witnesses, and were not written with the discharger's own hand, and so were null by the act of Parliament. It was answered, that custom had introduced several exceptions from the act, as bills of exchange, of the greatest importance, which are valid, being subscribed without witnesses, albeit not holograph; and in like manner the dis-