

1710. July 6.

WATSON against BROWN.

## No 524.

A factor's account-book, unsubscribed, stating payments by the tenants, found equivalent to a discharge.

LORD CULLEN reported Watson of Saughton against Brown, and some others of his tenants, for payment of their rents, crop 1707, and some preceding rests. *Alleged*, They had made considerable payments to William Watson, who was the pursuer's tutor *sine quo non*, and likewise his factor, and which they proved by his count-book produced, all written with his own hand, bearing the receipt of so much victual, and to whom he sold it. *Answered*, The books were not probative, not being subscribed by him, and likewise were neither regularly nor distinctly kept, but a confused mass of notes and affairs as they occurred, without any connection or cohesion, neither stating charge nor discharge; and the tenants neither denying their rent nor possession the years libelled, this confused count-book can never exoner them, unless they could produce receipts under the factor's or tutor's hand; and Saughton being minor, his curators cannot be secure, unless they do diligence for their rents; and as this count-book will not prove against the factor, so it can operate no discharge to the tenants; for though less solemnities and formalities be required betwixt master and tenant than in other cases, yet that is where the heritor is major and master of his own business, but tutors cannot plead that privilege. It is true, receipts betwixt masters and tenants need not writer's name and witnesses, yet they must always be subscribed, as was found 11th January 1628; Rate *contra* the Laird of Ayton, *voce* WRIT; and 20th January 1631, the Creditors of Brown, No 512. p. 12617. otherwise unsubscribed count-books are unprobative and null. *Replied*, That holograph counts, all written with the tutor's own hand, have always been sustained in favour of tenants, because of their rusticity and ignorance; and though *ignorantia juris neminem excusat*, yet poor tenants may safely think themselves secure when their payments are written down in their master's or his tutor's pocket-book; and this was sustained in the count and reckoning betwixt Fletcher of Aberlady and Salton, since the Revolution, and in sundry other cases. THE LORDS found this holograph count-book sufficient to exoner the tenants, being all written by the tutor and factor, though unsubscribed.

*Fol Dic. v. 2. p. 261. Fountainhall, v. 2. p. 583.*