No. 191. this doubt, it was observed, that if it was not *de solemnitate* necessary, the grossest fraud might with great ease be committed in writs not holograph. For suppose a deed to be written on five pages, that is, upon one full sheet, and one page of a second sheet, one has no more to do, but to throw away the first sheet altogether, and upon a new sheet, to fill up a writing very different from the true one.

Nevertheless, the Lords found as above, being of opinion, that the subscription of all the pages or sheets of a deed was not requisite *de solemnitate* by the act 1696.

Kilkerran, No. 9. *p.* 608.

1762. *December* 9. DUKE of HAMILTON *against* DOUGLAS of DOUGLAS.

No. 192.

The Lords repelled the objection to a sasine, that it was written bookwise and signed by the witnesses, only on the last page.

Fac. Coll.

*** This case is No. 40. p. 4358. *voce* FIAR ABSOLUTE, LIMITED.

1778. *February* 14.

JOHN M'DONALD of Braickish, *against* JOHN M'DONALD of Clanranald, and his TUTORS and CURATORS.

No. 193.
Objection to a deed not mentioning the number of pages.—Not stamped.

It was objected by Clanranald, to the validity of an agreement entered into between his father and M'Donald of Braickish, by which his father became bound to grant a lease for three nineteen years of the island of Canna to Braickish;

Primo, That, although the deed is written book-wise, yet it does not mention, in the testing clause, the number of pages of which it consists; nor are the pages numbered, both of which are required by the statute 1696, Cap. 15.

Secundo, It is not written on stamped paper, as required by the statutes 12*mo* An. C. 9. § 21. 3d. Geo. I. C. 7. 30th Geo. II. C. 19. which provide, that certain deeds, such as charters, bonds, leases, &c. shall be written on stamped paper. Although it contains a clause, obliging the parties to extend it on stamped paper, that does not remove the objection. Action must be denied upon it, otherwise the revenue of stamp-duties would be disappointed altogether. Neither can the objection be taken off by stamping the deed. After production, and being founded on in judgment, no defect in the writing can be supplied.

Answered for the defenders, to the first objection: This deed is written only on one sheet of paper, and the testing clause commences on the end of second page.

The statute 1696 applies only to the case where deeds are written on more than one sheet. So it was found, Robertson *contra* Ker, 7th January 1742, No. 190. p. 16955. No. 194.

To the second objection: This is not one of those deeds specified in the revenue-statutes establishing stamp-duties. It is not a lease, but only an agreement to grant a lease. But, if it did require stamping, the objection could be removed by getting the stamp still adhibited, upon paying the usual price.

"The Lords repelled the first objection to the pursuers title of action founded on the act 1696:—But, as to the second objection, sists process until the agreement is duly stamped in terms of law."

Act. *Fraser.* Alt. *Campbell.*

Fac. Coll. No. 15. p. 23.

1795. *February* 19. DAVID PETER *against* THOMAS ROSS and Others.

No. 195.
An execution of poinding consisting of more sheets than one, sustained, although one page of it, which contained nothing material, was not signed by the messenger, and another not signed by the apprisers.

Thomas Ross, and other creditors of John Macomish, having poinded some spirits in his possession, the validity of the poinding was objected to by David Peter, who pretended to have obtained a right to them from the common debtor.

The Sheriff having sustained the poinding, David Peter brought an advocation, and also a reduction of the execution, which consisted of more sheets than one, because one of the pages of it (which, however, contained nothing material) was not signed by the messenger, and another not signed by the apprisers.

Pleaded for the pursuer: It seems to have been the intention of the Legislature to put the executions of messengers, in so far at least as relates to the subscription of the parties, on the same footing, in point of solemnity, with private deeds. When formerly the latter were authenticated by the seal of the granter which, when the deed consisted of more sheets than one pasted together, was affixed to each of the joinings, the act 1469, C. 32. ordered messengers to fix their seals to their executions; and although it is not expressly said so in the act, it must have meant, that where the execution consisted of more sheets than one, the operation should be repeated in like manner. Afterwards, when the act 1540 required, that private deeds should be authenticated by the subscription of the granter, which in practice was interpreted to mean, that the subscription should be repeated at each of the joinings, the act 1686, C. 4, made the want of the subscription of the messenger a nullity in an execution; and there being the same reason for giving an extensive interpretation to this statute as to that of 1540, it must have been meant, that an execution in the old form should be subscribed in the same manner. The act 1696, C. 15. allowed "contracts, decreets, dispositions, extracts, transumpts, and other securities," to be written bookwise, provided every page be marked by the number first, second, &c. and signed as the margins were