

No. 178.
bill, the alteration being made by the debtor himself, at the time of his accepting it?

was this: That, when the bill was presented to John Park, he did not refuse that he had agreed in terms thereof with the pursuer; but said, he only inclined to make the bill for the principal sum, for that he intended to pay up the interest, which amounted to £10, previous to the term of payment in the bill; and accordingly, with his own hand he changed the letters *s* and *x*, in the word *sixty*, into an *ff*, making the sum *fifty* instead of *sixty*, and then he accepted the bill, and sent it back to the pursuer; and that this alteration was demonstratively the operation of John Park himself, is undeniable, from comparing the letters altered with the bill itself, and subscription adhibited, as the alteration is done with the same mark and form of writing.

“ The Lords, in respect of the special circumstances of this case, particularly that it is not denied, that the alteration of the sum in the bill was made by the acceptor himself, and that, from ocular inspection, it appears that the sum has been lessened from sixty to fifty, which is in favours of the acceptor, sustain the bill to the extent of the said fifty pounds Sterling claimed; repel the objection thereto; and remit to the Ordinary to proceed accordingly.”

Act. *Armstrong*. Alt. *Currie*. Reporter, *Auchinleck*. Clerk, *Campbell*.

Fac. Coll. No. 127. p. 344.

No. 179.

1777. August 8.

MATHISON *against* DUFF.

Found that if an obligation is in the form of a missive, stamping is not necessary. See APPENDIX.

Fol. Dic. v. 4. p. 412. T. MS.

No. 180.

1778. February 14.

M'DONALD *against* ———.

Found, that an obligation to grant a lease must be stamped. See APPENDIX.

Fol. Dic. v. 4. p. 412. T. MS.

No. 181.

A letter not holograph found obligatory, the subscription being acknowledged.

1779. January 19.

DUNCAN CLARK *against* DAVID ROSS.

Walter Ross purchased in Scotland, and shipped for London, two cargoes of coals, upon commission, for Duncan Clark and George Ross, who carried on a coal trade in Company there. Before the arrival of the vessels at London, Ross and Clark had agreed to dissolve the Company; and Ross being desirous to have the property of both cargoes, Clark consented, on condition of his getting sufficient security, that he should not be liable for any part of the price.

George Ross accordingly prevailed on David Ross to interpose, by a missive to Clark, in these terms: "As my friend Mr. Walter Ross writer, has gone under acceptance to John Grieve of Borrowstounness for two cargoes of coals, value about £111, which was shipped at Borrowstounness in October last, on account of George Ross, for George Ross and Company, I hereby become bound to you, that you shall not be called upon for the payment of any of the above cargoes of coals; or, if you should be called upon, I oblige myself, by this letter, to relieve you from any demands that can be made upon you on account of said coals," &c.

The missive was written by George Ross, and subscribed by David. George afterwards became bankrupt; and Walter Ross having brought an action against Clark for the price of the coals, Clark pursued David Ross for relief upon his missive, who acknowledged his subscription, but objected, that the missive was null, as wanting the statutory solemnities.

Pleaded for the pursuers: The missive in question being executed in England, its validity cannot be affected on account of the want of forms merely required by a Scottish statute. It is valid, if conceived in a form agreeable to the law of the *locus contractus*. Missives of this kind are obligatory in England, and common and necessary in expediting the operations of trade.

But, were the law of this country to be the rule, the transaction in this case was of a mercantile nature; and it is a fixed point, that a missive, such as the present, *in re mercatoria*, is probative and obligatory.—And even although it were not *in re mercatoria*, the objection to the missive is removed by the defender's acknowledgment of his subscription. This is sufficient to render the missive probative; and so it has been found in cases where the transaction was in no degree mercantile; Foggo against Milliken, 20th December 1746, Sect. 8. *h. t.*; Crawford against White, 13th January 1739, *IBIDEM*; Niel against Andrew, 8th June, 1748, *IBIDEM*.

Answered for the defender: The pursuer cannot found an argument on the *locus contractus*, as he has not established, by any authority, that cautionary obligations may be executed by the law of England in the form of this missive. If it is null and void by the laws of this country, it will not be presumed effectual by the law of England. The presumption is, that objections of a like nature would occur to it in the courts of that country as occur to it here.

By the law of Scotland, the missive in question is not probative nor obligatory. A certain indulgence with respect to forms is allowed in mercantile transactions which require dispatch. But a cautionary obligation is one of those deeds which comes directly under the intendment of the act 1681, and requires the solemnities mentioned in that statute to render it effectual.—Cautioners have been assoilzied from actions founded on imperfect deeds, even before the act 1681, where the principals in such deeds have been held as expressly bound; June ult. 1625, A. against B. Sect. 8. *h. t.*; Campbell against Campbell, 1664, *IBIDEM*.

It will not remove this objection to the writing, that the defender does not deny his subscription. The object of the statute is not merely to prevent the forgery of

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