

ing the cedent might write such a letter after his assignation, and therefore the date and delivery thereof ought *positive* to be proved by and beside the letter itself. THE LORDS found the allegiance relevant, notwithstanding of the reply, which was not respected, seeing the letter behoved to bear faith in the date, which it proported, except the pursuer would improve the same, or otherwise take it away.

No 493.

Act. ———.

Alt. *Baird.*Clerk, *Hay.**Fol. Dic. v. 2. p. 259. Durie, p. 424.*1630. *January 22.*M'GILL *against* HUTCHISON.

AN assignee to a bond having wrote to the debtor for payment, the debtor's holograph missive, without witnesses, which in law is equivalent to an intimation, was found probative of its date, so as to prefer the assignee to another creditor, who arrested the sum after the date mentioned in the letter.

No 494.

*Fol. Dic. v. 2. p. 258. Durie.*\* \* This case is No 64. p. 860. *voce* ASSIGNATION.\* \* A similar case is reported by Fountainhall, 22d July 1708, Gray against Earl of Selkirk, No 19. p. 4453, *voce* FOREIGN.1635. *December 9.*EARL of ROTHES *against* LESLIE.

THERE being a submission made betwixt one Leslie and ———, to a certain Judge, who by his decreet-arbitral following thereupon, having decerned the other party to pay to the said Leslie, the sum of eightscore pounds, whereunto he having made the Earl of Rothes a right, who charged for payment of the sum, and the other suspending, that the decree-arbitral, which was inserted in the blank on the back of the submission, was null, because the same wanted witnesses, and so was against the act of Parliament, which required the subscription of the party, and of the witnesses before whom it was subscribed, otherwise that it could not make faith; for by the want of witnesses the means of improbation were taken from the party;—this reason was rejected, and the decree-arbitral sustained, seeing the same was inserted in the blank upon the back of the submission, and bore, that the same was all written and filled up in the same by the judge-arbiter himself, to whom it was submitted, and bore to be all his hand writ; likeas the said blank was subscribed by the parties submitters themselves also; and in respect it bore to be holograph, the LORDS found, that there was no necessity to have witnesses inserted therein; neither was it respected that it was alleged, that the argument of holograph might well have place to excuse the not adhibiting of the witnesses, among parties, where any party had written a writ whereby himself might be bound;

No 495.

If a writ bear to be holograph, it is a sufficient proof, unless the contrary be proved.