

No. 172. clauses ; the preventing which was the design of the law ; *2do*, Because the act plainly regards writings written upon several sheets or pieces of paper joined together ; *3tio*, There is no statutory nullity introduced ; it does indeed give the aid of the law to writings, written and subscribed in the manner there directed ; but does by no means declare papers, written and subscribed after a different manner, void and null ; no, it leaves the matter where it was, *scil.* to be determined by the rules of law which would have taken place as if no such act had been made.

Replied : The statute is plain, and the nullity falls expressly under it ; for, by it, any person may choose whether he will have his security written sheet or book-ways ; provided, if they be written book-ways, every page be marked by their number, and signed, as the margins were formerly when battered ; and the last page make mention how many pages are therein contained : And these writs, marked and signed, as said is, are declared to be as valid and formal as if written on several sheets battered and signed on the margin. Now, in the present case, the writ founded on is neither numbered on the pages, nor makes any mention in the last page of how many it consists, which is directly without the provision of the statute ; and its being holograph will not supply the defect, seeing, according to that argument, a holograph writ without any subscription is valid, which would be too great a stretch. And as to the reason given for the law, viz. to prevent foisting in of sheets and clauses, it was answered, That it might have consisted of more sheets than one, for ought appears, which there is always ground to suspect where a writ wants the essentials of the law.

Duplied : The act plainly regards only writings that are composed of different sheets ; and the provisions in it are nowise calculated for a holograph writing, consisting of a single sheet ; and that it might have consisted of more, is plainly impossible from ocular inspection, and the natural and regular succession of every clause.

The Lords, in respect that not only the writ is holograph, but that it appears all written *unico contextu*, and that there is no suspicion of any sort against the deed, repelled the objection.

C. Home, No. 219. p. 361.

1743. June 17.

JOHN CHRISTIE Tenant in Callinch, *against* ANDREW TRAIL.

No. 173.

Discharge, if it is required to be on stamped paper.

The charger being creditor to the suspender by bill, of date the 26th November, 1739, charged him for payment, who suspended on this ground, That the bill charged on was comprehended under a general discharge granted by the charger to him the 14th June, 1740, containing " a receipt of payment of all accounts, bonds, bills, clags, and claims, that ever were betwixt them, preceding the date of the discharge."

Answered for the charger: That the general clause in the discharge was inserted through the inaccuracy of the charger, an illiterate country man; and that it was not understood betwixt them at that time to have that meaning to comprehend the bill in question, which he offered to prove. *2dly*, Objected; that the discharge not being on stamped paper, could not avail in law or equity. See the act *12mo Annæ*. Replied for the suspender: His reason of suspension being verified by writing under the hand of the charger, the same cannot be otherwise taken off than by his own oath; *2dly*, The discharge is not a deed of that kind which requires to be written on stamped paper. See Wood's Institutes.

The Lords found that the discharge did not require stamped paper.

C. Home, No. 238. p. 386.

No. 173.

1749. July 11.

ROSS against STEVEN.

Where two tacks were written upon one sheet of stamp-paper, the first in date was sustained, though the second, upon which the party did not found, was not stamped.

Kilkerran, No. 17. p. 613.

No. 174.

Two deeds of different dates written on one piece of stamped paper, the first is good, the second null.

* * D. Falconer reports this case:

Ludovick Dunbar of Westfield granted to James Steven a tack of certain lands, which was duly written upon stamped paper; and after granted him a further tack of other lands, which was written on the same paper with the former.

On Westfield's death, Margaret Ross his relict, in virtue of her life-rent right over these lands, insisted in a reduction of both the tacks; for that by the stamp act, *12mo Annæ*, it was provided, that when more than one matter or thing were ingrossed upon one sheet of paper, the duty should be payable for each of them: And when any matters or things were, contrary to the meaning of the act, written on any paper not duly stamped, the sum of £5 Sterling should be payable respectively for each of the said matters; until payment whereof the said matter should not be given in evidence, nor admitted in any Court: That these two tacks were written on paper not duly stamped, and consequently not probative till the sums respectively were paid for each of them.

Answered: The defender insists only on the tack first in date, which being written on stamped paper is good, and cannot be annulled by the after writing another on the same paper.

The Lords sustained the first tack.

Reporter, *Shewalton*, Act. *Lockhart & Brown*. Alt. *H. Home*. Clerk, *Pringle*.

D. Falconer, v. 2. No. 81. p. 88.