

No. 330.

1779. July 29.

MAITLAND *against* NEILSON.

Two persons having signed missives, agreeing to the terms of a lease, neither of them holograph of the parties, a scroll was made out in terms of themis sives; but the parties afterwards differing as to some particulars, the granter resiled. In an action for implement founded on the missives, the granter acknowledged his subscription; but the Lords notwithstanding found the missive improbable. (See APPENDIX.)

*Fol. Dic. v. 4. p. 426.*

1781 July 4.

GRIERSON *against* WILLIAM KING.

No. 331.

Objected to the discharge of a legacy that it was not holograph, the writer was not designed, nor were there any instrumentary witnesses. The Lords found it could make no faith in judgement.

William King, by his father's settlement, was left sole heir and executor, burdened with the payment of £20 Sterling to each of his sisters, payable the first term after his decease, "with the due and ordinary annual-rent from the said term, during the not-payment thereof."

Robert Grierson had married one of the sisters, several years before. She survived her father; and, some time after her death, Grierson brought an action, in name of his children, against his brother-in-law, for payment of the legacy above mentioned. King produced a discharge by Grierson, against which it was, *inter alia*,

Pleaded for the pursuer: *1mo*, The discharge founded on, is not holograph; the writer is not designed; nor are there any witnesses either designed or subscribing. In terms, therefore, of the act 1681, it must be "null and void, and can make no faith in judgment."

The decisions upon this point are numerous; and there are many of a recent date; December 26, 1752. Graham against Grierson No. 136. p. 16902 Mackenzie and Lawson against Park, November 29. 1764; No. 47. p. 8449. Sheddan against Spraul-Crawford, No. 48. p. 8456.; and Crighton and Dow against Syme, July 25. 1772. No. 328. p. 17047. But one that more particularly applies to the present case is, the decision in the 1763, Creditors of Young against Little, (Not reported,) where a discharge of a legacy of £20. Scots, conceived in the form of a missive letter, and subscribed before two witnesses properly designed, was found to fall under the statute, as wanting the designation of the writer.

*2do*, Robert Grierson had no right to discharge the legacy in question. By his father-in-law's settlement it was declared, that this provision should bear interest from the term of payment. As, therefore, it was a sum that, before the act 1661, Cap. 32. would have been accounted heritable, it still remains so *quoad*