

the pursuer ought to prove the writ to be holograph, albeit it purported to be written all with the party's hand-writ, and subscribed by him. No. 207.

Clerk, *Scot.*

Durie, p. 592.

* * The same found, same day, Elliot against Ellies, No. 114. p. 2649. *voce.*

COMPENSATION.

1632. July 12. RAMSAY and HAY *against* PYRONON and EDGAR.

One Pyronon a Frenchman, and his factor, having obtained decret against the bairns and executors of umquhile Patrick Ramsay, and Alexander Hay their tutor, for payment of money owing to the Frenchman by the defunct; after the discussing of the suspension of this decret, the monies being consigned by Alexander Hay their tutor, was decerned to be given up to John Edgar, procurator for the Frenchman, the said John being bound to repay the same *cum omni causa*, in case the said Alexander Hay and his minors prevailed in the reduction, which they had inteded of that decret; which reduction was inteded and pursued by them against Pyronon's self, and the said John Edgar, upon this reason, that the said Pyronon by his missive letters, subscribed by him, and written to umquhile Patrick Ramsay, the defender's father, had acknowleged these sums satisfied, for which sentence was given against them; and since the intending of this reduction, Pyronon being dead, it was alleged by John Edgar, that he could not be compelled to sustain this process, and to dispute upon this letter, whereupon the reason is founded, while some person to represent the principal party now deceased were summoned, who might answer to the letter, and might know how to elide the same, seeing he was only bound to repay the money, if the decret were reduced, as he is yet content to do; but the same cannot be reduced against him, he not being party therein, but of necessity the reduction ought to be deduced against the principal party, obtainer thereof, and who has only interest to maintain the same. This allegeance was repelled, and the process of reduction sustained against this excipient, receiver of the money, and who was bound, as said is, to repay the same, without necessity to call the principal party, obtainer of the sentence to this reduction, or any other representing him. And thereafter the defender alleging, that the letter produced, which was the ground of the reduction, was null, seeing it wanted witnesses, and designed not the writer according to the act of Parliament, the Lords found, that such private letters betwixt merchant and merchant, came not under that act of Parliament, albeit the missive letter bore an exoneration of a great debt acclaimed by the alleged writer thereof, and also that thereby he was constituted besides, to be owing unto him, to whom it was written, a great sum of money, whereby the defender alleged, that such private letters would be of a greater force than authentic writs, which may fall under the act of Parliament, which was repelled. *Item*, The defender denying the subscription of the letters to be Pyronon's hand-writing; likeas, he produced a letter, all written

No. 208.

The bare subscription of missives in re mercatoria is sufficient.

No. 208. and subscribed by the said Pyronon before he died, whereby he declared, that he never wrote such a letter, and therefore alleged, that the same could not make faith except it were proved to be all his hand-writing, at least that it were proved to be his subscription by witnesses, who saw him write the same, seeing he had no means to improve the letter, it being private and obscure, as said is;—and further contended, that in such cases, this ought only to be tried by the party's oath, who being now deceased, there rested no other manner of probation, but the oath of the defender, who is only found party, what he knows of the verity thereof; the Lords found, that the reducer had no necessity to prove this missive letter to be totally written by Pyronon, but that it was sufficient, if he should lawfully approve the subscription thereof, to be his proper hand-writing; and before they gave answer in point of law, if that approbation should be by witnesses, who were present, and saw him subscribe, or not, the Lords *ex officio* ordained both the parties, viz. the reducer, to produce all such means and documents as he had, to verify the truth of the subscription of the said letter, and which he would use to that effect; and also the defender to produce all such means and evidents as he had, whereby he might derogate to the faith of the said letter, and might make it appear not to be his hand-writing; and after all were produced, they would consider what faith in law should be given to the said letters, and would give answer to the cause *in jure*, concerning the said letter, and the reasons which are founded thereon.

Act. Stuart, Lermouth, & Hay.

Alt. Nicolson, Mowat, & Gibson.

Clerk, Hay.

Durie, p. 644.

* * * Spottiswood reports this case :

In an action of reduction pursued by umquhile Patrick Ramsay's bairns against John Edgar, assignee constituted by John Pyronon, Frenchman, the reason being founded on a missive letter subscribed by Pyronon, and sent to the said Patrick, wherein he acknowledged to have received in name of Patrick 1000 livres; answered, The missive was not obligatory, wanting witnesses and the writer's name. Replied, It being betwixt merchant and merchant, the solemnities could not be exactly required, but it was sufficient that it was subscribed by Pyronon. Duplied, Not sufficient, except the pursuer would prove it to be holograph. The Lords sustained the missive in respect of the quality of the parties, the pursuer always proving the subscription to be Pyronon's, and found it not necessary to prove the writ holograph; and because the defender contended, that he behoved to prove the verity of the subscription by some that saw Pyronon subscribe it, (he being dead himself, that it could not be proved by his oath) and the pursuer alleged he might prove it *per comparationem literarum*, or them that knew his hand-writing, or what otherwise he might of law; the Lords, before they gave answer to this, ordained both the parties to produce witnesses to be examined *ex nobili officio* upon that point.

Spottiswood, p. 70.