

tween them; and having died there, his brother Francis confirms himself executor dative as nearest of kin, and upon this title uplifts the money from the commissaries of the equivalent. Francis Ker having an assignation to all sums, from Sarah Hay, his wife, he pursues her brother for the half of the said money, and founds on the testament. Alleged, It is a null deed; for *1mo*, It does not design the granter, but only I undersubscribing; *2do*, It wants an executor which is *caput et fundamentum testamenti*; *3tio*, It does not bear who was the writer. Answered, Ought to be repelled, *1mo*, Because his naming Francis and Sarah Hays, as his brother and sister, does sufficiently design and circumstantiate him; *2do*, There needed no nomination of an executor, for he made an universal legacy of his whole means to his brother and sister. To the third it bears, "witness my hand," which presumes it to be holograph, unless they offer to improve it; and besides, it has two witnesses inserted and subscribing. The Lords considered it was done among soldiers, and in place where there was not *copia peritorum*, and therefore repelled the objections, and sustained the testament as a probative writ.

*Fountainhall, v. 2. p. 411.*

No. 220.

1708. July 7.

ANNA PATON Relict of Andrew Logie of Loanhead, *against* LEITH of Belchirie.

Anna Paton and Alexander Leith having raised mutual processes against one another before the Privy Council, and a committee being appointed to examine witnesses; both parties submitted their differences to the committee, by obliging themselves to obtemper and fulfil whatever sentence should be pronounced in the said matter. The committee gave out a decret signed by the Earl of Buchan as preses, and thereafter pronounced another decret in different terms, which was signed by the majority. Anna Paton charged Belchirie upon the last decret, who suspended upon this ground; that the same was null, the arbiters being exauctorated by the former decret of a different strain.

Alleged for the charger: The arbiters were not *functi* by the first sentence, which could not have the effect of a decret, being signed only by the preses of the committee.

Answered for the suspender: Writ is not essential in a decret arbitral, either by the civil law or by our custom, more than in other contracts *bonæ fidei*; but only an expedient to evidence what is to be performed by the parties *hinc inde*. For an arbiter is bound only *Sententiam dicere; et si in sententia dicenda erraverit, eam corrigere non potest, quia arbiter esse desiit*; and it was found, February 7, 1671, Home against Scot, No. 11. p. 8402. that a decret arbitral was valid without writ.

The Lords found, That the decret signed by the preses, and not by the plurality, was unwarrantable.

No. 221.

A decret arbitral found invalid for being signed by the chosen preses of the arbiters, and not by a plurality.