1711. *January* 23. WILLIAM Ross of Aldie, *against* CHARLES Ross of Ey.

No. 84.
A precept of warning found null, because the writer, though named therein, was not designed in terms of the act of Parliament.

In a removing at the instance of William Ross, against Charles Ross, the Lords found the precept of warning null, for that the writer, though named therein, was not designed in the terms of the act of Parliament 1681: Albeit the pursuer alleged, That statute did not extend to such writs as by former custom required not the writer's designation, viz. bills of exchange, holograph writs, receipts by masters to tenants, and precepts of warning; but hindered only to supply by a condescendence the designation of a writer, that law and former custom required to be designed: In respect it was answered for the defender, That the act is general and comprehending all writs; and custom hath introduced no exception of precepts of warning; though bills of exchange, receipts to tenants, and holograph writs, are excepted by the general custom.

Forbes, p. 483.

1711. *July* 3.
WILLIAM SHORT Wright in Edinburgh, *against* WILLIAM HABKIN Belt-Maker there.

No. 85.
A decreet-arbitral found null for want of the writer's name and designation.

In the suspension of a charge upon a decreet-arbitral, at the instance of William Short, against William Habkin, the Lords found it to be a nullity in a decreet-arbitral, that it wanted the writer's name and designation, albeit it was alleged for the charger, that the 179th act, Parl. 13, James VI., *in anno* 1593, which requires the writer of all writs and evidents to be named and designed, relates only to private writs, such as original charters, contracts, obligations, reversions, assignations, particularly therein enumerated, and not to decreets-arbitral, which are not mentioned, nor of the nature of those mentioned, and must have the same effect with other decreets, or public writs; for though a decreet-arbitral is not a judicial act in a strict sense; yet arbiters being vested by law with sufficient authority to determine in matters submitted to them, their decreets have all the effects of any judicial decreet, and may in some sense be reckoned judicial acts. "Arbitraria ad similitudinem judiciorum redacta sunt, quatenus idem utrobique agendi, excipiendi, probandi, Ordo, idem litis finiendæ tempus, L. 1. D. De receptis et his qui arb. Again, Arbiters being authorized to proceed with more latitude than ordinary Judges, viz. *secundum æquum et bonum;* and seeing the act of regulation 1695, declares decreets-arbitral unquarrellable upon any cause or reason whatsoever, except that of corruption, bribery, or falsehood; such decreets ought to meet with all imaginable allowances of favour. In respect it was answered for the suspender, That only acts of office, as writs under the hands of common clerks or notaries relating to their respective offices, require not the inserting the writer's

No. 85. name; and a decreet-arbitral is not a public deed of that nature, but only a private writ, containing the opinion and judgment of some knowing honest man, or men in a private capacity, concerning the differences of parties referred to him or them; and execution passeth upon decreets-arbitral, not by public authority, but by consent of the submitters signing a clause of registration to be subjoined to the arbiter's sentence. The L. 1. D. De receptis et his qui Arbitr. is only a counsel or direction to arbiters how to proceed; for a decreet-arbitral could not be reduced for not observing that form of process; so that there can remain no doubt but decreets-arbitral come under the general of all writs and evidents in the act 1593, or of all probative writs in the act 5, Parl. 3, Ch. 2. Nor is it to the purpose, that decreets-arbitral are not particularly mentioned in the act 1593; for dispositions, renunciations, and discharges, (which are unquestionably private rights) are also omitted. The act of regulation 1695 doth indeed hinder decreets-arbitral to be reduced, except for corruption, bribery, or falsehood; but this is not a decreet-arbitral, in so far as it is not duly formed and signed.

Forbes, p. 515.

1711. *November* 30. The CREDITORS of SPOT Competing.

No. 86.
A *printed* bond wherein the filler up of the debtor's name and designation, date, and witnesses, was fully designed sustained.

In the ranking of the creditors of Archibald Murray of Spot, the Lords repelled this objection against a printed bond of cautionry granted by Archibald Murray in the year 1697, for Kenneth Urquhart, then collector at Aitoun, to the Earl of Glasgow and other tacksmen of the customs; that it wanted and could not have the writer's name and designation; seeing the filler up of the blanks, viz. the debtor's name and designation, date and witnesses, was fully designed, and that is sufficient in printed bonds, which custom hath made legal with us in the public offices of custom and excise, and manufactures, whose affairs are much expedited by having the common stile of their bonds lying by them, and nothing to do but fill up the essential parts as occasion offers; albeit it was alleged for the Laird of Keir and other creditors, that fraud (which the acts of Parliament designed to obviate) may be committed in printed securities as well as written ones; and there is no imaginable reason, why a written security without the writer's name is not as good as a printed one without it, or a printed bond without the name of the drawer, as bad as a written one without it; since both do alike frustrate the design of the law, viz. to ascertain the writer or drawer of the security.

Forbes, p. 551.