it at granting the discharge), was not meant to be included in that discharge, and mentioned some circumstances that raised in us a strong suspicion that it was not intended to be comprehended; yet we could not allow a proof by witnesses to redargue an express writing.

No. 21. 1748, Feb. 11. WILLIAM TAYLOR *against* LORD BRACO.

IN the case mentioned 26th November 1747, (No. 17, *voce* FRAUD), betwixt these parties, Lord Braco objected to William Taylor's bond, which was by Andrew Geddes, younger of as principal, and Archibald his father as cautioner, yet the testing clause run thus, "In witness whereof I have written and subscribed these presents, at" &c.; which bond, if it was Andrew the principal, then Archibald the father, who sold the lands, was not bound; and if it was Archibald the father, then it was null as to both, because not signed by the principal debtor. But upon answers, the Lords repelled the objection, agreeably to two precedents in point, 14th February 1712, Orr against Wallace, (DICT. No. 153, p. 16919), and 15th January 1734, Gilmour against Representatives of Pollock.

*** Relative to the case of Gilmour, the note in the manuscript, at the date 15th January 1734, is as follows:—The Lords adhered to the Ordinary's interlocutor. The former decision (alluding to Orr against Wallace) was the *ratio decidendi* that moved the Lords.

No. 23. 1749, June 2. BARBARA ANGUS *against* DR COLT.

See Note of No. 18, *voce* CAUTIONER.

No. 24. 1749, June 2. SINCLAIR *against* JAMES CADDEL, Upholsterer.

CADDEL hired Sinclair as a journeyman for three years, by a writing, not stamped paper, and the writer not designed. He entered to the service and continued 15 months, and then left him. Caddel sued him in the Bailie-Court, who ordained him to make out his service, and granted warrant to incarcerate him till he found caution for that effect. He suspended, and objected, 1st, That the contract was unlawful, being *species servitutis*; 2dly, Not stamped paper, as an indenture of apprentices ought to be, nor as all contracts must be; 3dly, The writing null, because no writer. But Murkle found the letters orderly proceeded, and gave expences. Sinclair reclaimed, and we had no regard to the first, nor did we look on him as an apprentice; but found some difficulty as to the other two; and on the whole, found that having begun the second year's service, he must complete that year, and adhered as to expences; but suspended as to the third year.

No. 25. 1749, July 22. PICKEN *against* JANET CROSBIE.

THE deceased Picken disponed an adjudication he had for L.500 Scots to his wife in liferent, and two daughters in fee. His son obtained a reduction in absence of this disposition, and they pursued a reduction of that decreet. A proof before answer was allowed, and the pursuer proved sufficiently that the defunct could not write, if it was not sometimes by initial letters. But on the other hand, there was a clear proof by instru-

mentary witnesses and others, that he employed the writer to make out this deed, and passed his son because he had already left him more than any of his bairns; that he actually subscribed this deed, and for that end had his name and sirname written on another paper before him, that he might copy it, (which he appeared to have done very unskilfully, all the letters being capital letters); and, last, that he had shown it to other witnesses, and told them it was subscribed by him. And some persons suggesting that exceptions might be taken to it because of the subscription, he proposed to have it written over again to be signed by notaries, so that there was no doubt of the truth of the deed. The objection moved by the President against it was, that the defunct could not be said to know to write, and therefore he ought to have used notaries; and that sustaining such deeds would destroy the indirect manner of improbation by proving the granter could not write. But the majority were of a different opinion. It could not be said that the defunct could not write, when he did write; and that would at once destroy all writings signed only by initial letters. And as to the other, the proof adduced by the defender would have destroyed this deed, had all the subscribing witnesses been dead, and if it had not been clearly proved that the defunct actually subscribed the deed and owned it as his; and therefore we sustained it, 22d July. But, 39th November, we reduced the disposition, and assoilzied from the process, which is a reduction reductive of a decreet of reduction in absence. But, 12th January 1750, we altered, and sustained the deed;—26th July, Again altered.—29th November, Adhered.

No. 26. 1751, Jan. 9. JOHN FALCONER *against* ARBUTHNOT, &c.

IN a reduction of some bonds granted by Lady Phesdo the pursuer's mother as legacies to several grandchildren and great grandchildren, particularly a bond of 12,000 merks to Fordoun or his children about two months before her death; it was proved that the Lady when 94 years old was bed-fast, and had been for some time so blind that she hardly knew her own children and servants till she was told who they were, and through that and the palsy or shaking in her hands she could not sign without help, and therefore signed receipts to tenants when Fordoun commonly led her hand. Here it was proved that she signed these bonds with Fordoun's assistance; some of the witnesses said, holding her by the wrist; others that his hand was upon her's; others that he only held the end of the pen. The witnesses did not hear the bonds read to her, but she said to them that these papers had been read to her, and therefore she desired them to witness her subscription. But as she was so blind, that she could not read any of them herself, and, for any thing that appeared in the proof, bonds of another tenor or for other sums might have been read, and not the true sums, so that there was no evidence that she knew what she signed, we unanimously reduced them all. (See No. 32, *voce* WITNESS.)

No. 27. 1753, March 9. ALEXANDER DURIE *against* JOHN DURIE.

DAVID DOIG of Cockstoun as trustee for Alexander Durie, objected to a disposition of a very small parcel of lands disponed by the said Alexander to John Durie, that the disposition was void and null by the act 1681, for that the names and designations of the witnesses were not inserted in the body of the deed but subjoined to it. The case appeared