No. 340.

In answer, it was contended by the holder of the bill, that the material difference between that and the present case is, that the alteration by erasing the words "on demand," and substituting "one day after date," was acknowledged to have been done by the cashier of the Bank, the holder of the bill, and raiser of the action upon it; and it was likewise acknowledged, that the alteration had been made immediately before commencing the action, to found a claim for interest, which could not have been maintained on the bill as it originally stood. It was thus made long after the bill fell due, and without the approbation or knowledge of the accepters.

The Court were unanimous in considering, that the alteration was here made to correct a mere blunder or mistake, not by the drawer or holder of the bill, but probably by the advocator himself, who was also the writer of the bill; and this it was presumed was done at the very time of writing the bill.

Reporter, *Lord Justice Clerk.* For the Advocator, *Turnbull.* Agent *John Campbell, tertius.*
Alt. Agent, *William Whyte.*

F. *Fac. Coll. No.* 23. *p.* 46.

1803. *January* 18. BREBNER Petitioner.

No. 341.
An informal missive sustained as a cautionary obligation.

George Brebner, manufacturer in Glasgow, was convened in an action before the Sheriff of Lanarkshire by the representatives of John Freeland and John Dowie for repetition of £142, 5s. 6d. paid by them to Anthony Lax. The claim was founded on the following letter:

Glasgow, 8th December 1798.

"Messrs John Freeland and John Downie,

"Gentlemen,

"As I understand that you have been kind enough to become security for Timothy Fisher, dyer in Camlachie, to the satisfaction of his creditors, I am informed Mr. Anthony Lax of Sedbury, Yorkshire, is one of said Timothy Fisher's creditors; I hereby oblige myself to indemnify you to the extent of Mr. Anthony Lax's claim upon you for said composition, in case of your sustaining any loss by the said security.

(Signed) "GEORGE BREBNER.

"*Ebenezer Watson*, witness.

"*George D. Blaikie*, witness."

The Sheriff having sustained the defences, a bill of advocation was presented, 23d. December 1802; when a remit was made to the Sheriff, to alter his interlocutor, and to find the missive libelled on binding on the defender.

Against this judgment Brebner reclaimed,

Pleading: This writing is destitute of all the legal solemnities requisite for rendering it valid. It is not written on stamped paper; it is not holograph of the party; it does not mention the writer, nor the names and designations of the witnesses; nor

does it mention that it was signed in their presence. The enactments establishing the legal solemnities in the execution of writings of importance, declare all informal deeds null and void; and this without any exception whatever, even where it cannot be disputed that the subscription is genuine, either from the express acknowledgment of the party, or in consequence of unquestionable evidence proving the subscription; nor is it confined to writings applicable to heritable rights, or to such cases where writing is essential; the enactments contained no such limitation. It is competent, no doubt to refer to the usual proof of an agreement of this sort, the oath of the party; but then this reference must be regulated by the rules of law applicable to this species of proof. No. 341.

The decisions of the Court, in similar cases, have been various; and it will be material to have the point settled; Sir Archibald Edmonstone against Lang, 23d June 1786, No. 335. p. 17057. Wallace against Wallace 25th November 1782, No. 333. p. 17056. Chrighton against Dow, 21st July 1772, No. 328. p. 17047. Russel against Paisley 17th December 1766, No. 138. p. 16904. M'Farlane against Grieve, 22d May 1790, No. 336. p. 17057.; and the decisions there referred to were decided on the principal, That the acknowledgment of subscription is not sufficient to supply the want of the statutory solemnities of deeds. The opposite doctrine is supported by Crawford against Wight, 16th January 1739, No. 229. p. 16979. and Foggo against Milliken, No. 231. p. 16979. which appear to have been wrong decided. Brown against Campbell, 28th November 1794, No. 337. p. 17058. does not apply to this case, as one of the reasons was, that a *rei interventus* barred all objections to the informality of the writing. Sinclair against Sinclair, 3d February 1796, (mentioned in a note under the case of Brown) was a case of a similar kind.

The Court refused the petition without answers.

Lord Ordinary, *Meadowbank*. For Petitioners, *Campbell*. Agent, *Alex. Young, W. S.*
Clerk, *Menzies*.

Fac. Coll. No. 74. p. 168.

1805. *February* 27. TRAIL *against* TRAIL.

No. 342.

A minister having subscribed a testament with the testator's name instead of his own, on being required to do so by a person who could not write, the testament was sustained, upon the minister attesting the fact in the character of a notary.

Fac. Coll.

*** This case is No. 33. p. 15955. *voce* TESTAMENT.

*** See Div. 1. Sect. 5. *voce* BILL OF EXCHANGE.