single subscription, and are never annulled for want of the solemnities in other solemn contracts. It was replied, That in this account there were some articles for money advanced which cannot pretend that privilege, and the title of the account bears annual-rent, which might have been added *ex post facto*, and doth require a solemn contract with witnesses. There is also a postscript after the subscription. No. 216.

The Lords found the merchants count subscribed probative, though without witnesses, although some inconsiderable articles bore "money advanced by the merchant," but found not his subscription sufficient to instruct annual-rent agreed on; and did not sustain the postscript.

Stair, v. 2. p. 587.

1692. *February* 4. LESLY of Balquhain *against* MENZIES.

Bills of exchange were, before the acts of limitation, considered as so much privileged, as not even to be subject to the vicennial prescription of holograph writs. No. 217.

*** This case is mentioned by Forbes in his Treatise on Bills. See No. 188. p. 1628.

*** The same seems to have been found 25th July, 1732, in the case of Rodgers against Cathcart and Ker. See No. 188. p. 1631. See APPENDIX.

1697. *July* 21. INGLIS *against* CLARK.

The Lords found, That without regard to the act of Parliament 1681, custom must be the rule in protests of bills of exchange, as well as in the bills themselves, and therefore a protest was sustained, though the witnesses were neither designed nor subscribing. No. 218.

Fountainhall.

This case is No. 6. p. 7724. *voce* JUS QUÆSITUM TERTIO.

1706. *January* 1.

MARJORY ROW *againist* CHARLES ROW of Innerallan her Brother.

In the reduction at the instance of Marjory Row against Charles Row her brother of a decreet arbitral pronounced betwixt them, she insisted upon these reasons; 1*mo*. The submission bore to be subscribed with the blank on the back No. 219. A submission bore to be subscribed "with the

No. 219.
blank in the back thereof" by the parties and arbiters, in token of their acceptance. Found to import that the blank on the back of the submission was subscribed by the arbiters at subscribing the submission, and not after filling up the decree arbitral, which was sustained as a sufficient reason to reduce the decree.

thereof by the parties and arbiters upon the 7th January 1704; whereby it was in the power of the haver of the submission with that signed blank to fill up the same at his pleasure; 2*do*, The decreet is intrinsically null for not being final, in so far as the parties are ordained to count and reckon anent a sum therein mentioned.

Answered for the defender, The words of the submission being, "That the parties and arbiters, in token of their acceptance, have subscribed these presents with the blank upon the back thereof the said 7th of January;" nothing can be understood thereby, but that the parties and arbiters in token of their acceptance subscribed the submission, and that the parties subscribed the blank on the back, *applicando singula singulis;* for it had been nonsense to the arbiters to subscribe the blank before the sentence, in token of their acceptance; which is further cleared from this, that the decreet bears date the tenth of the said month, upon which the arbiters subscribed before witnesses, distinct from those that subscribe the submission; 2*do*, A libel or process may be determined as to a part and not as to the whole, and so may any subject matter submitted.

Replied for the pursuer: Such an application of *singula singulis* is inconsistent with the words of the submission, which expressly bear that the arbiters signed the blank of that date, and the decreet does not bear that they signed thereafter; 2*do*, By the civil law (Voet. Comment. in Pandect. Tit. De recept. Arbitris N. 18.) Ubi plenum est arbitrium, non aliter videbitur officio functus arbiter, quam si omnes quæstiones sua dirimerit sententia, &c. And the reason why an oversman was once an essential in a submission, Act 88. Par. 6. James I. was, that the decision might be final. It is in vain to pretend that in some cases decreets pronounced *ultra vires*, have been sustained *pro reliquo*. For there is a signal difference betwixt a nullity separable from the writ, as when somewhat not submitted is decerned; and a nullity that influenceth the whole, as in the present case, the not subscribing of the decreet arbitral at the date thereof, or its not being final.

The Lords sustained this reason of reduction, That the blank on the back of the submissionwas subscribed by the arbiters at subscribing the submission, and not after inserting the decreet arbitral thereon, relevant to reduce the decreet arbitral; and found the reason proved by the submission.

Forbes, p. 58.

1708. *January* 1. KER *against* HAY.

No. 220.
Testamentary deeds are privileged, and sustained although much deficient in formalities.

Patrick Hay, brother to Gourdy, having £100 Sterling due to him in the African Company, and going a Captain to the Scotch colony at Darien, and sickening there, he makes a testament in March 1699, at New Edinburgh, in New Caledonia, whereby he leaves the said £100 Sterling to Francis Hay, taylor in the Canongate, his brother, and Sarah Hay, spouse to the said Francis Ker, his sister, equally be-