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-

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 1*mo*, It does not design the granter, but only I undersubscribing; 2*do*, It wants an executor which is *caput et fundamentum testamenti*; 3*tio*, It does not bear who was the writer. Answered, Ought to be repelled, 1*mo*, Because his naming Francis and Sarah Hays, as his brother and sister, does sufficiently design and circumstantiate him; 2*do*, 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.

No. 221.
A decree arbitral found invalid for being signed by the chosen preses of the arbiters, and not by a plurality.

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 decreet signed by the Earl of Buchan as preses, and thereafter pronounced another decreet in different terms, which was signed by the majority. Anna Paton charged Belchirie upon the last decreet, who suspended upon this ground; that the same was null, the arbiters being exauctorated by the former decreet 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 decreet, being signed only by the preses of the committee.

Answered for the suspender: Writ is not essential in a decreet 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 decreet arbitral was valid without writ.

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

Forbes, p. 261.