No. 310.

ing it; but it was never extended to this case, where the writ bore no writer's name at all; for there the writer cannot be known, much less designed after 40 years time. The Lords found the practice before the act of Parliament 1681, had allowed the condescending on the writer, as well as on his designation, till it was obviated and discharged by that act; and therefore sustained the bond, they proving who was the writer, and repelled the nullity. Against which my Lord Nithsdale protested for remeid of law.

Fountainhall, v. 2. p. 573.

1710. *November* 21.

WILLIAM HAMILTON of Wishaw *against* JOHN MOIR of Cairnhill.

No. 311.
A deed sustained although the first page was informally executed, as it was relative to the other page which was formal.

An agreement betwixt William Hamilton of Wishaw, and Gavin Moir of Cairnhill, was drawn up in form of articles, written upon half a sheet of paper; these to be performed by Cairnhill upon the first page thereof, signed by both parties and witnesses, without inserting or designing the writer and witnesses; and those to be performed by Wishaw, upon the second page; at the foot whereof both parties obliged themselves to perform the above and within articles, betwixt and a certain day: Then the writer and witnesses are duly inserted and designed, and both parties and witnesses do again subscribe. Wishaw pursued John Moir, as heir to Gavin Moir his father, to perform his part of the articles.

Alleged for the defender: Process cannot be sustained against him, upon the articles to be performed by his father; because the same bear no date, nor the names and designations of writer and witnesses inserted.

Replied for the pursuer: The law requires writer and witnesses to be inserted and designed in the end of the writ; and it is so here. For this mutual agreement is but one *idem corpus juris*, answering to the inscription on the first page; and the articles in the last page expressly relate to the first; and long missive letters written upon several pages are obligatory, though the last page be only subscribed; and writer and witnesses are only inserted and designed under the last page or docquet of fitted accompts consisting of many pages.

Duplied for the defender: Inserting on the second page the writer and witnesses' names and designations, doth no more supply the nullity of the first side of the contract, than if it had been written on different sheets; for the articles of the first side might have been blank, and filled up at pleasure. And though accompts and missive letters have, by our uniform practice, been found not to fall under the act of Parliament; obligations and contracts are not so privileged. 2*do*, It required a statute, to allow decreets and securities to be written bookwise; and yet in these not only is each page subscribed, but the number of pages and the writer and witnesss are mentioned; whereas the second side of these articles do not bear, That the witnesses subscribing were also witnesses to the first side, or that it was written of the same date, and by the same writer.

The Lords found the writ probative, and repelled the defence, in respect the last page is relative to the first. No. 311.

Forbes, p. 441.

1710. *December* 22. GORDON *against* M'INTOSH.

No. 312.

Where there are no witnessses at all to the deed founded on, this objection amounts to a *denegatio actionis*, which therefore does not admit of being supplied, as was found in this case (No. 224. p. 16974) of a missive letter wanting witnesses.—See Beatie, No. 303. p. 17021.

Forbes. Fountainhall.

1711. *February* 13.

WILLIAM SHORT Wright in Edinburgh, *against* WILLIAM HOPKIN Beltmaker there.

No. 313.
Formalities of a decree-arbitral.

In the suspension of a charge upon a decree-arbitral at the instance of William Short against William Hopkin, the Lords found it no nullity in a decree-arbitral, That it wanted the writer's name and designation; albeit it was alleged for the suspender, That only acts of office, as writs under the hand of common clerks or notaries relating to their respective offices, require not the inserting the writer's name; and a decree-arbitral is not a public deed of that nature, but only a private writ, containing the opinion and judgment of some knowing honest man in a private capacity concerning the differences of parties referred to him; nor doth execution pass upon decrees-arbitral, by public authority, but by consent of the submitter's signing a clause of registration to be subjoined to the arbiter's sentence; in respect it was answered for the charger, That though a decree-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 decrees have all the effects of any judicial decree, and may in some sense be reckoned judicial acts. Again, arbiters being authorised to proceed with more latitude than ordinary judges, viz. *Secundum æquum et bonum;* and their decrees declared, by the act of regulation 1695, unquarrellable upon any cause or reason whatsoever, save that of corruption, bribery or falsehood; such decrees ought to meet with all imaginable allowances of favour.

Forbes, p. 496.