

No. 79. designed the Earl's servant ; and that it was improbable, he could have so much money to lend his master, or that he and his heirs should have so long wanted the same ; and that it appears, that the bond has been blank *ab initio*, the creditor's name being filled up with another ink ; and the said Adam being designed to have been the writer of the bond ; and yet where it bears that he is writer, it does not bear the said Adam ; which it would have borne if his name had been filled up from the beginning ; and it appears, that the Earl being known to be a person negligent, and being at London for the time, and having to do with money, might have given the bond to the said Adam his servant for raising of money, and that he forgot to call for it :

The Lords found, That the said bond could not be taken away upon the presumptions foresaid ; unless it were either prescribed, or the defenders would offer to improve it.

Clerk, *Gibson*.

*Dirleton*, No. 215. p. 100.

No. 80.

1676. February 22.

OGILVIE against BUCKIE.

Improbation being proponed against a discharge, after the same had been questioned as null, because it wanted the writer's name, at least he was not designed ;

The Lords found, The said writ null and not probative, unless the pursuer should condescend upon a writer living ; at least, if he were dead, should produce writs written or subscribed by him, to the effect the pursuers may thereupon have the means of indirect probation entire.

Act. *Mackenzie*.

Alt. *Thoirs*.

*Dirleton*, No. 343. p. 164.

1683. November 29.

AGNES and JEAN WATSONS, against JOHN SCOT in Belford.

No. 81.

Agnes and Jean Watsons, pursue John Scot in Belford. Alleged, A disposition was null by the late act of Parliament in 1681, because it did not design the writer and filler up of the witnesses' names and designations at the tail of the writ, and that it was not suppliable now by condescending on the writer. " The Lords found it no nullity that the inserter of the witnesses' names and designations was not mentioned nor insert." It were a more material nullity if the filler up of the date, the sum, the creditor's name, or terms of payment, or marginal notes, were not expressed.

*Fountainhall*. v. 1. p. 246.

\* \* P. Falconer reports this case :

Watson having charged Scot for payment of a sum of money contained in a bond, and Scot having suspended upon this reason, That the bond was null, in regard it appeared by ocular inspection, That the creditor's name, designation, date, and inserting of the witnesses, was with an other hand than the writer of the body, and that the inserter was not designed ; and it being answered, That the charger offered to condescend upon the inserter, who was one of the co-notaries subscribers of the bond ; it was answered, That by the late act of parliament 1681, bonds are declared null, where the writer is not designed, and by the said act it is declared, That the said nullity is not to be supplied by condescending *ex post facto*. The Lords sustained the bond, and found, That the act of parliament extended to the writer of the bond, but noways to the inserter of the date and witnesses, which they found might be supplied by a condescence.

*P. Falconer, No. 70. p. 47.*

\* \* Sir P. Home also reports this case :

Margaret Scot having disposed a tenement of land in Selkirk to Agnes and Jean Watsons, and they having pursued John Scot as representing the said Margaret for implement of the disposition ; alleged for the defender, That the disposition was null, seeing it appears by ocular inspection that the disposition has been drawn blank as to the person's name to whom it was to be granted, and blank as to the date, witnesses, and their designations, and filled up with another hand ; and it being declared by the 5th act, Parl. 1681, that all writs subscribed hereafter, where the writer and witnesses are not designed, shall be null, and cannot be supplied by condescending upon the writer, or the designations of the writer and witnesses ; answered, That it is evident by the disposition itself, that one of the notaries who subscribed for the disponent was inserter of the pursuer's name, date, designations, and the names of the witnesses in the several blanks, which is sufficient to take off that nullity, that the inserter of the date and witnesses, and the parties' names are not designed, and is equivalent as if the party disponent had written and insert the same herself. The Lords sustained the disposition, and found that the act of Parliament extended only to the writer of the bond, but not to the inserter of the date and witnesses, which they found might be supplied by a condescence.

*Sir P. Home, v. 1. No. 508.*

\* \* Harcarse also reports this case :

A disposition being quarrelled as null upon the act 5. Parl. 1681, for that the writer who insert the date and witnesses was not designed ;

No. 81.

The Lords found, That the naming and designing the writer of the body of the disposition, did answer the design of the act of Parliament ; and that it was not necessary to name and design the inserter of the date and witnesses, though that was done by another hand than the writer of the body of the right.

*Harcarse, No. 587. p. 222.*

\* \* The like found 19th June 1722, Laird of Edmonston against Lady Wolmet.  
(See APPENDIX.)



1710. *January 25.* JOHN ALLARDICE *against* ALEXANDER FORBES of Ballogie.

No. 82.

A blank printed bond, whereof the filler up of the principal sum, penalty, course of annual rent, date, and witnesses, were not designed, found null.

John Allardice late Provost of Aberdeen, and Alexander Forbes of Ballogie, being both creditors to Forbes of Craigie turned bankrupt, and pursuing forthcomings, it was objected by Ballogie, that Allardice's bond on which he competed was null, neither bearing the writer's name, nor the filler up of the date and witnesses, and not now suppliable by any condescence *ex post facto* by the act of Parliament 1681. Answered, This differed from the case of other writs, for it is a printed bond now used for expedition of commerce in matters of trade, and by manufactories ; and was for the price of cloth bought from the Woollen Manufactory at Aberdeen, and for dispatch of trade has the same privileges with foreign and inland bills, notes betwixt merchants, and discharges by masters to their tenants, and such are used by the African Company, the Commissioners of the equivalent, and the managers of the customs and excise, who all use printed bonds, and never scruple who fills up the blanks therein ; and subscriptions in merchants count-books are probative for the space of twenty years by the act of Parliament 1669, though these solemnities be omitted ; and there is an express decision in Falconer, 30th November 1683, Watson and Scot, No. 81. p. 16860. where the want of the name of him who filled up the date and witnesses was found to be no nullity ; for the 179 act 1593 requiring the mentioning of the writer's name under the pain of nullity, and the act 1681 for designing the witnesses, neither of these acts require the filler up of the date and witnesses names to be expressed. Replied, If there were no more here wanting save the designation of him who fills up the date and witnesses, something might be pleaded to sustain the writ ; but in these printed bonds, the whole essentials of the writ are blank, viz. the names of the debtor and creditor, the principal sum, and annual-rent, these being the *substantialia* of the bond, law necessarily requires the inserter and filler up of these to be expressed, otherwise a great mean of improbation and discoveries of falsehood should perish ; and though writs *in re mercatoria* be favourable, yet they have no dispensation from the formalities of the common law, else five or six merchants entering into a copartnery might elude the acts of Parliament made for regulation of the formalities of writs. The Lords found the bond null, and preferred Bal-