

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-

logie ; but in regard it was suggested, that the blanks were filled up by Craigie, the debtor's own hand, they ordained that matter of fact to be inquired into. No. 82.

Fountainhall, v. 2. p. 558.

* * Dalrymple reports this case :

In the competition of the creditors arresters of the effects of Forbes of Craigie, Ballogie craved preference to John Allardice and the other proprietors of the woollen manufactory of Aberdeen, because, although they had the first arrestment, yet the Manufactory's bond was null, in respect it did not contain the name nor designation of the inserter of the sum, the creditor's name, the term of payment, and date and witnesses.

It was answered : The diligence proceeded upon a printed bond, which could not be understood to fall under the certification of the act of Parl. 1681, no more than bills of exchange and receipts granted to tenants, which are binding without any other formality than subscription ; and it is a general practice of societies, to take printed bonds ; as also it is the practice of collectors of the customs and excise and all the branches of the public revenue ; neither is it any nullity, that the inserter of the date and witnesses, &c. is not designed ; as to which the act of Parl. 1681 provides nothing, as was found 30th November 1683, *Watson contra Scot*, No. 81. p. 16860.

It was replied : Printed bonds are indeed allowed by practice ; but then all other formalities must be observed with the greater exactness ; for albeit bonds designing the writer have been sustained, upon condescending on the inserter of date and witnesses, yet here the whole substantial of the bond are blank, such as the debtor's name, sum, term of payment, date and witnesses, and the remainder that is printed is only for expedition in matters of commerce ; but the writer of all these substantial must be considered as the writer of the bond, and necessary to be designed in the writ itself, or otherwise the bond is null by the act of Parliament.

“ The Lords found the bond null, unless it were condescended upon, and instructed, that the substantial were filled up by the debtor ; in which case as a holograph bond is sufficient, so the defect of this bond might be supplied in that manner.”

Dalrymple, No. 91. p. 128.

* * Forbes also reports this case :

In a furthcoming pursued by the creditors of Alexander Forbes of Craigie, Alexander Forbes of Ballogie, who arrested the common debtor's effects upon registered bonds, pleaded preference to John Allardice ; in respect the ground of his arrestment is a printed bond granted to the late Woollen Manufactory of Aber-

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deen, where in the essentials, viz. the debtor and creditor's names, the sums, principal, penalty, and course of annual-rents, date, witnesses' names and designations, are filled up in writ, without mentioning the name and designation of the upfiller; and consequently is null by the act of Parliament 1681.

Alleged for Allardice: His bond being granted *in re mercatoria*, to the company's manager, for the price of cloth delivered to the debtor, who was a partner in the manufactory, is valid without the ordinary solemnities required by law in other writs; as is clear from the instances of subscriptions in count books, bills of exchange, notes betwixt merchants, discharges betwixt master and tenant, bonds given to the African Company by subscribers, that Company's receipts to them, and all the printed notes given into, or issuing from the commissioners of the customs or excise; which are valid by custom, though wanting these ordinary solemnities; and the notes of any trading company, and the indorsation of bills are expressly excepted in the act annulling blank writs.

Replied for Ballogie: *Esto*, that bills, indorsations, and merchants' notes, which are short writings, are privileged for dispatch sake; yet there is no exception of printed bonds, and privileges are not to be extended *de casu in casum*. And albeit the African Company had not observed the due formalities in their printed bonds, that can be no precedent for others; seeing that Company was empowered by act of Parliament, to make such orders and methods of management of their own affairs, as they thought fit. And to say that the officers of customs and excise use unformal writs, is no argument at all, unless it were alleged that such, when quarrelled, had been judicially approved.

The Lords found, That albeit for the greater dispatch of business, incorporations and public offices are allowed to print their bonds with blanks for the substantial, yet the filler up of these blanks must be designed; and therefore sustained the nullity objected against Allardice's bond, That the filler up of the blanks therein is not named and designed; unless it be offered to be proved, that the written part of the bond is holograph, *i. e.* all written with the debtor's own hand.

Forbes, p. 387.

1710. February 21. WHITE *against* HENDERSON and Others.

No. 83.

The writer need not be named and designed in his own handwriting.

John White, late Bailie of Kirkaldie, having right to an adjudication from Sir David Arnot of the lands of Birkhill, he pursues a summons of mails and duties thereon against Henderson and several other tenants; and having obtained a decret in absence, he takes out caption, and in June last apprehended four or five of them; and they, to prevent imprisonment, grant the messenger a bond of presentation, obliging to enter their persons in the tolbooth of Kirkaldy betwixt and a day, if they pay not the debt against that time; and they having all failed, but one, they are charged on the bond of presentation, which they suspended on these