

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.*

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1710. December 22. GORDON against M<sup>c</sup>INTOSH.

No. 312.

Where there are no witnesses 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 Beattie, No. 303. p. 17021.

*Forbes. Fountainhall.*

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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 equum 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.*