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deen, wherein 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 substantials, 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.

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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 decreet 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

reasons, 1*mo*, That they had implemented the bond, in so far as Henderson the principal of them presented himself to the messenger at the precise day, hour, and place prefixed, for himself, and in name of the other obligants, who were but cottars, and some of them lying sick at the time, and took instruments thereon. Answered, Where the obligation is personally, to sist, law knows no such representation as to make one stand for all the rest; and *esto*, some of them had been then sick, yet they were bound to present themselves as soon as they recovered, and were able to travel. The Lords repelled this reason of suspension, and found his appearance did not exoner the rest. 2*do*, Objected, The bond of presentation is null, because the writer's name and designation are not insert with his own hand; but he who wrote the body of it stops at the clause of registration; and another who fills up the date and witnesses, he adds, that the former part of the bond was written by such another man, who he designs, which is contrary to the 179th act 1593, expressly requiring the inserting the writer's name and designation; and the designing him by another man's hand, however it might have satisfied before the act 1681, yet since that it must be null, seeing the not designing the writer and witnesses is by that act declared unsuppliable; and the inserting his name by another is no more but a condescending who was the writer, which is prohibited by that act. Answered, That there is nothing more ordinary than to cause draw bonds, discharges, and other writs by men of skill in Edinburgh, and send them to the country where the parties dwell to be signed there, where the writer is not present, but the rest of the bond is written and filled up by another, and the writer's name insert; and it were a very dangerous preparative to find this a nullity; for all laws declaring rights or writs null are odious and penal; and it is a rule, that *odia sunt restringenda*. Next, all correctory laws are strictly to be interpreted, and never to be extended; neither are nullities of writs to be introduced without an express law or act of sederunt, otherwise no man could be secure of his property. And the acts of Parliament cited do indeed require, that the writer's name be inserted, but do not express that it should be by himself; and the naming it by another satisfies the design as fully, which was to furnish means of improbation in case of falsehood, 18th January 1637, Wolf *contra* Scot, No. 268. p. 6064; and Watson, 30th November 1683, No. 81. p. 16860. Replied, Bonds consist of two parts, the *first* is the body, comprehending therein the writer's name; the *second* is the date, place, witnesses names and designations; and this last part may be filled up by another different from the body, but he can never insert the name of him who wrote the first part; for that ought to be done by himself; and if he has stopped when he came to that part, and did not add "written by such a man," in so far it is null, being only designed and condescended upon by another, and not by himself; and no instance can be given where a writ was sustained bearing the writer's name insert by another, who had neither power from him to declare so, nor, it may be, so much as acquaintance of him. The Lords, by plurality, found it a nullity; though many doubted, and, on a reclaiming bill, it was stopped till farther hearing. There was a separate allegeance, That *esto* it were a defect,

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yet I can supply it by referring the verity of your subscription to your oath, as has been oft found, 1st July 1624, Kinlochy *contra* the Conservator, No. 44. p. 13231.; 9th February 1631, Barrens against Hutchison, No. 45. p. 13232.; and in 1696, Lindsay against Beaty; and lately, in June 1709, Hay of Arnbath *contra* the Duke of Gordon, Sect. 11. *h. t.;* but this point was not decided here.

On the 9th of June 1710, the Lords, upon a bill and answers, altered this interlocutor, and found it no nullity.

Fountainhall, v. 2. p. 570.

*** Forbes reports this case:

The tenants in Birkhill being charged at the instance of Bailie White, upon a bond of presentation granted by them when taken with caption, they suspended upon this ground, That the bond was null, because the name and designation of the writer thereof till after the clause of registration, was not inserted with his own hand, but by him who wrote the rest of the bond, and filled up the blanks, date, place, and witnesses; seeing the first part of a bond comprehends the body, with the writer's designation, and the second, the date, place, witnesses names and designations; and the writer cannot be designed by another, but only by himself.

Answered for the charger: No law ever required inserting the writer's name and designation with his own hand, but to insert by any person, answers both the letter and reason of the acts 179, Parl. 13, James VI. and act 5, Parl. 3, Ch. 2, That all concerned may know the writer in case of improbation; and nullity of writs or rights can only be introduced by an express law, or act of sederunt. Nay, albeit by the act 1593, it be expressly required, that the writer's name and designation be mentioned, in all evidents, in the latter part thereof, before inserting the witnesses; yet so tender were the Lords to annul writs upon strict niceties, that till the year 1681, the writer's designation was always allowed to be supplied by a condescendence; and the not inserting his name before the witnesses, is never held to be a nullity, if inserted at all; writer and witnesses are in the act 1681 coupled together, and their names and designations may be inserted in the same manner: But so it is, that it sufficeth to insert the names and designations of witnesses by any person's hand, as well as by the writer of the body of the paper, or by the witnesses themselves.

The Lords repelled the nullity, and sustained the bond, in respect it was thought a dangerous preparative, to annul writs, upon pretence, that the writer's name was not inserted with his own hand; there being nothing more ordinary, than to send bonds from Edinburgh to the remotest places in Scotland, to be subscribed and filled up in the essential parts; and writs signed in the country, are often remitted with a note of the date, names and designations of the witnesses, to be inserted by the writer of the body at Edinburgh.

Forbes, p. 407.