1711. *December* 1. STIRLING of KEIR, and CARMICHAEL of BONINGTON, *against* The EARL of GLASGOW, SIR GEORGE HOME, and OTHERS, Tacksmen of the Customs.

IN a competition betwixt thir parties, on Murray of Spot's estate, the customers produce a bond granted by him, as cautioner for Kenneth Urquhart, their collector at Ayton, for £1800 Scots, wherein he fell short.

OBJECTED,—The bond is null by the 179th Act 1593 and the 5th Act 1681, requiring all writs to contain the writer thereof; whereas this is a printed bond, wanting the name of the printer; the design of the Act, by that practice, being wholly evacuated, which is, that, by inserting the writer's name, they get much light in the trial of the falsehood or truth of the bond. Neither does the printing supply this; for if it were good without it, then no imaginable reason can be given why a written security, wanting the writer's name, is not as good as the printed one without it; and *pacta privatorum* cannot derogate from such public profitable laws. And the offering to prove the verity of the subscription by Spot's oath, would do very well against himself, but can never prove in this competition against co-creditors, he being broken.

ANSWERED,—The sustaining such printed bonds is become a law by the force of custom, which is the best explainer of law; and the filler-up of the debtor's name, the sum, with the designation of the witnesses, (which are the essentials of a bond,) is *nominatim* inserted; and these printed bonds are become frequent in all public societies to facilitate commerce; as in the tacksmen of the customs and excise, the African Company, the Newmills manufactory, discharges of cess, &c.; that to call them in question would at one stroke unhinge many securities in the nation, and retard the management of trade. These printed blank bonds lying beside them, so their clerk has no more ado but to fill up the essential parts, and declare by whom it is done: and there is no law discharging the use of printed bonds. And the Acts of Parliament cited do not touch this case, and are fully satisfied by inserting the name of him who fills up the blanks.

The Lords repelled the nullity objected, and sustained the printed bond, filled up in manner foresaid. By which decision it appears, if it did not bear the name of the filler-up and inserter of the blanks, then it would be null.

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1711. *December* 6. ROBERT LENTRON *against* LIEUTENANT WOOD.

MR John Lentron of Kincaple having granted a renunciation of an infeftment of annualrent he had out of the Earls of Southesk and Balcarras their estates, and likewise granted a bond of 4000 merks to Catharine Wood, his spouse; Robert Lentron, his heir, pursues a reduction of these deeds, as done *in lecto*, against Lieutenant Wood, the said Catharine's representative: who compeared, and took terms to produce the writs called for; but at last suffered certification to pass against them, for not production. Robert Lentron considering this decreet of certification would be of small avail to him, being only in a simple reduction, (for they would be reponed any time after this, by satis-

fying the production,) and this might be delayed to a time that his witnesses for proving deathbed might be dead, and so his mean of probation totally perish; therefore he gives in a bill to the Lords, representing, That, for him to extract his decreet of certification would be to little purpose; and that he had ground to believe that they keeped up the papers, with that very prospect and view, that, his old witnesses being dead, then they might safely produce them: therefore craved the Lords would examine his witnesses, to lie *in retentis* to meet their process when they insisted in a reduction of his certification, that he might then repeat his probation of the deeds being done on deathbed.

The Lords considered that this pursuer had neglected a very clear remedy law gave him, if he had adjected a conclusion of improbation to his reduction; for then he would have got a certification, against which, the defenders would not have been so easily reponed; and that a pursuer in a simple reduction could regularly get no more but the certification of his summons; which is only to annul and reduce them, aye and while they be produced: Yet, the case being favourable, they ordained the bill to be answered by the defender; who, in excuse for not satisfying the production, did affirm, That, going to Flanders, he left the papers with Mr Carstairs, Principal of the College, who being now at London, he could have no access thereto till his return; and did not contradict much the examining the witnesses *medio tempore*, but opposed a commission, and craved they might come to Edinburgh and depone.

The Lords were straitened in two things:—1*mo*, How witnesses could distinctly depone upon writs not produced, nor their date yet known. 2*do*, How far they could grant a commission, seeing Wood's consent to their examination was expressly clogged and qualified with their coming here. As to the *first*,—The Lords thought the difficulty might be removed by adjusting the special interrogatories, when the deeds were done, when he died, and when he contracted the sickness, and how long before; and, if he came abroad, or kept his house, and, if he came forth, whether supported or no. And as to the *second*,—They considered the testificates produced, bearing, they were so old, infirm, and valetudinary, that they declared on soul and conscience they were not able to come to Edinburgh; and so directed a commission to any whom Wood should name, and, failing thereof, to the commissary or magistrates of St Andrew's, where they dwell, to be reported against the tenth of January next.

The admitting a probation *hoc ordine* was thought a great relaxation, and dispensed with our ancient strict forms; but it was supported and maintained by material justice and equity, the great law of the world.

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1711. *December* 11. The Lady Enterkin *against* Cunningham of Enterkin.

The Lady Enterkin against the Laird. Mistress Catharine Hamilton, Lady Enterkin, being in possession of her jointure-lands; John Cunningham of Enterkin, her son, alleging she had taken herself to a lesser annuity till the debts were paid, holds a Baron-court, and therein decerns the tenants of the life-rent-lands to pay in their rents to him; and then, in the tenants' name, raises a suspension upon multiple distress, as not knowing whether to pay their rents to