1710. *November* 18. ANNA RICHARDSON *against* JAMES COLVIL, her Husband.

MISTRESS Anna Richardson, daughter to Sir J. Richardson of Smeiton, having married Mr James Colvil, and disponed to him a good jointure she had from a former husband; and he having dilapidated his fortune, and diverted (which the English law calls eloping) from her, she is forced to pursue him for having an aliment modified to her and her family.

ALLEGED,—There can be no separate aliment; in regard I am willing to take you home, and maintain you as my wife, conform to my ability and your quality.

This defence the Lords sustained; in regard, though she alleged inhumanity and maltreatment, yet she had not proven the same, but only that he was a spendthrift.

After several months' expectation, she, finding no performance, gave in a bill to the Lords, bearing, that a husband's bare offer of receiving back and entertaining his wife was not relevant against a process of aliment, unless *bona fide* performed; otherwise the most austere and extravagant husbands will never fail to make that sham offer, if it can elide the process. And, therefore, seeing law presumes one who is *semel malus* always to continue and persist *in eodem genere malitiæ*, and he having emptied her former dwelling-house by selling the plenishing, his general offer now cannot be regarded, unless he find caution to allow a necessary and competent provision for maintaining herself and family in time coming. To show it is elusory, he has never offered to fulfil; and thus he has treated her these four years back, wherein she has been necessitated to contract debt; none living, like cameleons, upon the air: therefore her modification must not only be *pro futuro*, but also for bygones to pay her creditors.

This being ordained to be answered, and he absconding that he might not be cited; the Lords ordained him to assign a domicile competently furnished and provided, and not blind alehouses, where he used to lurk: and, failing thereof, appointed her to condescend on a fund and estate out of which they might modify to her a suitable aliment corresponding to his fortune; with certification, if he did not condescend on his house, they would proceed to modification against him. *Vol. II. Page 598.*

1710. *November* 23. WILLIAM HAMILTON of WISHAW *against* GAVIN MOIR, Cairnhill's Heir.

WILLIAM Hamilton of Wishaw and Gavin Moir of Cairnhill being both creditors on the estate of Cleland of Faskine, they enter into articles of agreement containing mutual prestations on either party, which are drawn up upon a half-sheet of paper, Cairnhill's part being wrote on the first page of that paper, and Wishaw's part on the other side of the page, on the back of it. Wishaw having suffered it to lie over near 25 years, and Cairnhill being dead, he pursues his heir for implement; who objects that the articles pursued on are null as to him, in so far as his father's part of the articles contained in the first page wants the designation of the writer's name and witnesses: and, though Wishaw's part on the other side bears them, yet that can never integrate the defect in the first part, they being quite distinct writs.

ANSWERED,—If the articles had been writ on several leaves of paper, there might have been some pretence for this nullity; but, they being both written upon one leaf, it is *idem corpus juris et unicus contextus.* And the first page is signed by both parties and the witnesses: but their designation, as needless there, is referred to the total finishing of the articles, and there are duly designed and insert. And both parties and the same witnesses do again subscribe the second page: so that the two makes but one writ, even as fitted accounts contained in several pages are valid and probative writs, though not subscribed till the end and docket; and so, in charters and securities, written bookways, by the 15th Act 1696; and the same holds in missive letters containing more pages than one. And so the Act of Parliament, 1681, requiring the writer and witnesses to be designed is *in terminis* fulfilled, seeing thir two pages cannot be separated nor divided, as might have been if they had been in two distinct half-sheets of paper.

REPLIED,—The second side is no more the same with the first than different sheets of paper are; and to do otherwise opens a door to fraud. And, as to missives and fitted accounts, they have a privilege for the benefit of commerce and facilitating trade, which mutual contracts have not.

The Lords repelled the nullity, and found the articles binding and obligatory; the second page relating to the first *per expressum.* *Vol. II. Page* 599.

1710. *December* 1. Dr ANDREW BROWN of DOLPHINGTON *against* SIR WILLAM MENZIES.

JAMES Clark of Wright's-houses, being under incumbrances, dispones his lands to Sir John Clark, his brother, irredeemably, but under a backbond, that how soon he is relieved of his cautioners, and the debts owing him are paid, he shall denude. Sir William Menzies acquires right to sundry apprisings, which bear the lands *speciatim,* and then, a general clause of all other right, title, and interest James may have therein: and one of them mentions "backbonds." Dr Andrew Brown of Dolphington, being likewise a creditor, he adjudges, *per expressum,* Sir John's backbond to his brother, and, in the ranking, craves to be preferred; because, though posterior to Sir William Menzies, yet, having adjudged the only right that was standing in Wright's-houses' person, and narrated the very date, tenor, and contents of the backbond, I must be preferable to you, who have adjudged the property of the lands from him, which truly he had not; and special clauses do always derogate from general ones, and preponder.

ANSWERED,—Sir William is not in the case of a general clause, for his adjudications mention "backbonds" as well as the Doctor's: and creditors cannot perfectly know all the rights standing in the debtor's person; so that adjudging at random the lands, it will carry all subaltern rights; because *sub majore omnia jura minora continentur, et semper specialia generalibus insunt.* See *21st November* 1673, *Fairholm* against *Renton;* and *23d January* 1674, *Nisbet* and *Mean.* And, if it were otherwise, debtors might dispone under latent backbonds which can never come to their creditors' knowledge, being no where registrate; and so defraud their diligence. It is true, if one adjudge his debtor's lands, lying within such a shire or parish, without designing them, and another