

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 WILLIAM MENZIES.

JAMES Clark of Wright's-houses, being under incumbrances, disposes 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

adjudges them by their special names, as they stand in his author's charter, the first will be null against the co-creditors, but good against the debtor himself; as was found between the competing adjudgers of *Menzies of Enoch*, 21st July 1680, where the Lords found an adjudication of lands undesigned null. But Sir William Menzies's rights are as formal and special as our law requires, and will carry this backbond as fully as Doctor Brown's; and, being long prior, must be preferable.

Some of the Lords laid hold on the latency of the backbond. But it being ALLEGED, That Sir John had deponed and produced it in the process, where it had lain for a long time, they remitted this point to the Ordinary to be further heard. Yet, many inclined to think the general clause comprehended this backbond sufficiently, and were for preferring Sir William Menzies to the Doctor. Though some think the l. 80 *D. de Reg. Jur.* goes quite another way. *In toto jure generi per speciem derogatur, idque potissimum habetur quod in speciem directum est.* Vol. II. Page 602.

[See the subsequent part of Fountainhall's Report of this Case, Dictionary, page 187.]

---

1710. December 9. The ROYAL BANK of SCOTLAND and the LORD ADVOCATE against ROBERT FLEMING and BARBARA STEIL.

A COMPLAINT was given in by Mr David Drummond, treasurer to the Royal Bank of Scotland, and Sir David Dalrymple, her Majesty's Advocate, against Robert Fleming, late schoolmaster at Stenhouse, and Barbara Steil, his wife, bearing, That, at Lanark fair and sundry other places, forged bank-notes of £12 Scots, had been dispersed and vented; and, after inquiry, they were discovered to have been first used by the said Robert Fleming: whereon he and his wife being apprehended, and put in Hamilton Tolbooth, and examined by the Sheriff-depute, in September last, they both, from an impression of their guilt, made an ingenuous confession, that he had, since Whitsunday last, counterfeited above twenty of these small bank-notes, and passed them in sundry places; and she had bought a plaid with one of them and that the necessity of his numerous family, and poverty, had first tempted him, besides his having a current hand of write, capable of imitating what lay before him; and that he had lead frames and stamps, for making the impress on the Bank-notes; and that, after several weeks' trial, he had arrived to that perfection, that he had wrote the whole body of the note, and put Mr Drummond's and James Cumming's names thereto. The Advocate having given an order to transmit him to Edinburgh prison; the Lords gave direction to bring them both before them to be examined, before they should meet with wicked persons who would advise them to retract and deny all. And this day, being sisted before the Lords, they were examined apart; but the first thing occurred to the Lords was, Whether their declarations emitted at Hamilton, before the Sheriff-depute of Clidsdale, must not be first cancelled, ere they could be interrogated on the foresaid crime: and, in regard it was capital, and improbation depending against them, the Lords thought they behoved to be at absolute freedom from any previous confession; which