

No. 308. *obligationum*, and by our fifth act 1681, are not now suppliable by any condescendence to be made; and all writs not designing the witnesses in the body shall be null, and make no faith in judgment, nor outwith the same. Answered; It is indeed acknowledged the bond labours under the foresaid nullities, yet it is a relative writ, expressly bearing, that Boyne had given the Duke a bond for the entry, and that the Duke had granted Boyne a charter as his vassal; and both which writs being formal in all the solemnities of date, place, and witnesses, the Duke's bond now pursued on must be reputed *pars contractus*, and of the same date; and to supply all defects, that this bond was of the same date with the other writs produced; and was all done and transacted in 1680, and so falls not under the act of Parliament founded on, which is not till August 1681; and that it is his Grace's subscription is simply referred to the Duke's oath, and which was sustained in two late cases, the one betwixt Thomas White, and Sir George Hamilton, and the other, the woollen manufactory of Aberdeen against James Fife, where the want of witnesses was supplied by referring the verity of the subscription to the party's oath. Replied, The Duke oppones the act of Parliament, which makes it an unsuppliable nullity, unless you refer not the single subscription, but the whole transaction to his word of honour, which privilege now, by the union, the Peers claim. The Lords found this was not in the case of the act 1681; seeing it appeared, by the context of the writs produced, it was done in the year 1680; a year before the said law was made; and therefore found it relevant for supporting the said bond, to offer to prove by the Duke's oath, that it was truly his subscription, and was signed in the year 1680, of the date of the charter and other bond produced, and so prior to the act of Parliament founded on. The Duke's prejudice was, Boyne being broke, he wholly lost the debt.

*Fountainhall, v. 2. p. 500.*

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1710. *January 4.*

THOMAS LOGIE Merchant in Edinburgh, *against* PATRICK FERGUSON Merchant there.

No. 309.

In the process at the instance of Thomas Logie, against Patrick Ferguson, as representing John Ferguson cordiner in Edinburgh his father, founded on an obligation, subscribed by him before witnesses, and bearing the writer's name without any designation; the Lords found the said writ, which was granted since the act of Parliament 1681, null for want of the writer's designation; albeit the pursuer offered to prove by the defender's oath, That the obligation was truly subscribed by his father, and still unsatisfied; and alleged that the statute 1681 prohibiteth supplying by condescendence only, without prejudice to supply by other methods.

*Ferbes, p. 384.*