

No. 318: 1734. July 5. SWAN *against* CAMPBELL.

The drawer of a bill was not even after 23 years, found entitled to plead that his draught wanted the solemnities of a probative writ.

* * * This case is mentioned, No. 187. p. 1627. The particulars will be detailed in the Appendix.

No. 319. 1735. January 21. TAILFER *against* HAMILTON of Grange.

A decree-arbitral being challenged in a reduction, because the submission on which it proceeded was null by act 1681, there being only one witness to the subscription of one of the parties; the defence was, That the submission was homologated by the parties appearing and pleading before the arbiters. Answered, This may give it the effect of a verbal submission, which by law is reducible upon iniquity, but cannot make a null writ valid. Replied, A writ though defective upon the act 1681, is not *ipso jure* null; it has an effect in law as being sufficient to found a process; it is elidable indeed by exception, but if the party do not chuse to move his exception, it is not *pars judicis* to take notice of it; and the acts of homologation mentioned, are sufficient to bar the party *personali objectione* from moving his exception; the Lords sustained the defence of homologation. See APPENDIX.

Fol. Dic. v. 2. p. 551.

No. 320. 1738. January 25. LOW *against* BEATSON.

It was objected as a nullity to a bond of thirlage, That though subscribed by two notaries and four witnesses, one of the witnesses is not designed, or so much as inserted in the body of the writ; the Lords found the bond null upon the act 80, Parl. 1579, and that the defect was not suppliable by condescending on the designation of the witness, though the certification of this act is not more express than of the act 1593, being almost in the same words.

Fol. Dic. v. 2. p. 550.

* * * See Kilkerran's report of this case, No. 130. p. 16899.