

1741. *January 9.*DOIG *against* KER.

No. 132.
Objection to a testing clause, that the persons who signed as witnesses were not said to be witnesses in the body of the writ, repelled.

In the day-book of interlocutors, I find Lord Drummore reported the following objection to the testing clause of an assignation. The clause run thus; "In witness whereof, I have subscribed thir presents with my hand, written by Mr. David Lyon, commissary of Brechin, the first day of December, 1706 years; William Gray, precentor in the church of Brechin, William Hall, merchant in Brechin, and the said Mr. David Lyon. Signed Magdalen Livingston. William Gray witness, William Hall witness, David Lyon witness." It was objected as a nullity, that the persons who sign witnesses were not said to be witnesses in the body of the writ, but witness only adjected to their subscriptions.

The Lords repelled the objection.

C. Home, No. 161. p. 274.

1742. *November 30.* MITCHELL *against* MILLER.

No. 133.

A man having named in his testament nine trustees, by whom a sum of money was to be uplifted and applied for certain uses, for the poor, &c. it was objected that the testament was null, because it was written only by two of the trustees, as this might give room to frauds; and the case of trustees in whose person the right to the subject is lodged, is different from the case of a legatary in common law. The Lords found the writ sufficiently tested. See APPENDIX.

Fol. Dic. v. 4. p. 409. M.S.

1749. *July 13.*

WALLACE *against* CAMPBELL.

No. 134.
Designation of both witnesses by the same place.

It was found no nullity in a writ, that it was tested thus, "Before these witnesses A. and B. in Inverasragan;" which was not thought to be the same with that of Halden against Ker, Sect. 5. *h. t.* in which case the designation *servitor* could only apply to one of the witnesses without a re-duplication, which was the very thing wanted; whereas, without any re-duplication, "in Inverasragan" applies to both, and was therefore thought to be a good designation of both; *2dly*, It was thought to be a good answer to an objection of that kind, that the granter had promised not to plead it.

Kilkerran, No. 18. p. 613.

* * * D. Falconer reports this case :

1750. *January 5.*

Archibald Campbell, vintner in Inverary, disposed to Colin Campbell of Inverasragan his brother, a tack of a house in that town, for his relief of certain considerable debts, in which he had become bound for him.

Thomas Wallace, merchant in Glasgow, a creditor of Archibald's, adjudged the tack, and pursued mails and duties, in which he was opposed by Inverasragan on his disposition, who had since the adjudication made payment of a debt he was bound in.

Objected to the disposition : In so far as it is supported on the cautionary and subsequent payment, the bond, wherein the disponee was bound, is null ; being subscribed before Thomas Watson and Mr. Duncan Macpherson in Inverasragan, so that the first witness is not designed ; and so it was found, that a bond subscribed before A. and B. servitor to C. was null ; ——— 1714, Haldane against Ker of Cavers, Sect. 5. *h. t.*

Answered : The word " servitor " could only apply to one of the witnesses ; but in this case the reference to place, agreeable to grammar, applies to them both.

Objected, *2dly*, The septennial prescription of cautionary was run, and he not obliged to pay ; and if he did it voluntarily, could not, on that ground, support a right to compete with an onerous creditor, who had adjudged prior to the payments.

Answered : The cautioner was not obliged to use the prescription, for freeing himself from the obligation ; and having paid, had a good claim against the debtor, whose debt still subsisted ; and therefore may use any security he has from him against another creditor.

The Lords repelled the objections to the disposition.

See. The same parties, No. 48. p. 2805. *voce* COMPETITION.

Act. *J. Ferguson.*

Alt. *H. Home.*

D. Falconer, No. 116. p. 133.

1749. *December 6.* ISABEL EDMONSTON against EDMONSTON of Ednam.

James Edmonston of Ednam, being prohibited by the tailzie whereby he held his estate, to provide younger children without the consent of certain friends, entered with their consent into a contract of marriage ; and thereby provided the number of three or more to 20,000 merks to be divided by him at any time of his life, and obliged himself to aliment them till the division.

Isabel Edmonston pursued Andrew her eldest brother for her share ; to which he answered, the consent of the friends was not validly adhibited, for that the

VOL. XXXVIII.

92 H

No. 134.

No. 135.

A writ was subscribed by different parties at different times, and a witness to all the subscriptions wrote his name be-