Session confirmatory of the border-decreet. Reduction having been raised of these sentences, by Elliots, there is first a decreet reductive thereof obtained; and that being suspended, a decreet of suspension follows thereupon. So each of the parties founded on decreets *in foro;* which moved the Lords to allow the Ordinary to hear them on the material justice and equity of the cause, abstracted from any of the decreets, who brought in the same by way of report this day; which consisting of a great many points, the Lords determined some of them; but finding them so many, they ordained them to be heard in presence, if there was any thing unwarrantable or unformal used in extracting the Elliots' decreet; for if they subsisted, then Hayning was precluded, and the cause at an end; and if by any nullity these decreets should be laid open, then it was to be argued, if the last decreet of suspension obtained by Hayning laboured under any defect?—For if it could not be opened, then there was no access to canvass his prior sentences, and though nullities should be found, yet by the new regulations 1695, it could go no farther than singly to redress the prejudice by that nullity. The Lords gave interlocutors on these points, viz. That though the money was not paid by these Elliots, but by Charles Murray of Hadden, in name and behalf of Sir Gilbert Elliot of Stobs, their cautioner, who had adjudged their estate for his relief, yet they had interest to seek repetition of the money, to the effect they might disburden their estates of the diligence and incumbrance affecting them for the same; 2*do*, They found this could not be called *res transacta, esto* there had been something given down; because albeit it had been made with the direct party, yet it was not *super re dubia*, but here *lis erat finita;* and though he might doubt of the validity of his right, yet there being neither reduction nor suspension depending, it could not be properly a transaction; 3*tio*, That the marginal note in the bond of presentation could not bind the cautioner, because not signed by him, and though it was subscribed by the notaries, yet it did not bear they had mandate from him to sign the marginal note, and it might have been done by them *ex intervallo*. (See APPENDIX.)

No. 59.
the writ did not bear that the notaries had a mandate to sign the note.

Fountainhall, v. 1. *p.* 683.

1704. *January* 13. DALLAS *against* PAUL.

No. 60.

By act 5, Parl. 1681, the witnesses ought "to hear the party give warrant to the notary to subscribe for him, and, in evidence thereof, touch the notary's pen;" yet no law requires that the notary's attestation do mention this solemnity, and the same will be presumed until the contrary be proved.

Fountainhall. Dalrymple.

*** This case is No. 55. p. 5677. *voce* HOMOLOGATION.