

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.