

No. 143. The Lords, after advising minutes of debate, "sustained the objection." A petition was afterwards presented for Mrs. Marshall, the widow, but it was refused.

Reporter, *Lord Braxfield.*
Clerk, *Sinclair.*

Act. *Geo. Wallace.*

Alt. *A. Abercromby.*

Fac. Coll. No. 4. p. 8.

1787. *November 28.*

DOUGLAS, HERON, and Company, *against* MRS. HELEN CLERK.

No. 144.

An error in the Christian name of a subscribing witness, otherwise properly designed in the deed, and in such a manner as sufficiently to distinguish him, held a nullity under the statute.

In a process of ranking of creditors, it was objected to a bond produced for the interest of Mrs. Clerk, that it bore to be signed in presence of a witness there designed, "Thomas Wars, servant to Thomas Nicolson, vintner in Edinburgh;" whereas the name of the witness subscribing was "Francis Wars." And in support of the objection, it was

Pleaded: The statute of 1681, Cap. 5. expressly requires that witnesses be designed; and declares, that if this be omitted, the writings are null; and that the defect cannot be afterwards supplied by condescence. Here the subscribing witness mentioned is not even named in the deed; which therefore is null; a conclusion sanctioned by a decision in a case precisely similar, *Abercromby against Innes*, 15th July, 1707, Sect. 11. *h. t.*; in which it was successfully argued, "that it was more safe for the lieges, and just for the Lords, to walk by the rule of the express words of the act of Parliament, than to break in upon it, and thereby introduce the supplying or rectifying of other greater mistakes." The same principal governed more lately the analogous case of the *Creditors of Graham against Grierson*, 26th December, 1752, No. 136. p. 16902.

Answered: *Si constet de persona*, as in the present case, where the designation excludes the possibility of doubt, both the spirit of the statute, and the construction given to it by the Court, combine to exclude the nullity in question. The inference from the scope of the enactment is self-evident, and the interpretation of the Court is exemplified in the case of *Beattie against Lambie*, 26th December, 1695, Sect. 11. *h. t.*

The Lord Ordinary found, "that Mrs. Clerk could have no place in the ranking, in respect that the bond upon which her interest is founded was not executed in terms of law."

To this interlocutor, on advising a reclaiming petition and answers, the Lords adhered.

Lord Ordinary, *Swinton.*

Act. *Abercromby.*

Alt. *Solicitor-General.*

Clerk, *Home.*

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Fac. Coll. No. 6. p. 11.