

1711. July 21.

DAVID OGILVIE of Clova *against* WILLIAM BAILIE of Lamington.

No. 123.

Date and place not essential to the validity of a writ, and the designation of witnesses to a writ before the act 1681 allowed to be supplied, though the witnesses were not named in the body of the writ.

In a process at the instance of Clova against Lamington, for payment of 2,000 merks of legacy left by Mrs. Grizel Hamilton, daughter to the Lady Bargeny, to which the pursuer had right by assignation from the legatary; the defender produced a declaration under the testatrix's hand for proving that she had power to bequeath only the half of the said sum. The pursuer replied, That the declaration was null, as wanting date, place, witnesses' names and designations.

Duplied for the defender: Date and place are not *de substantialibus* of a writ, and he offered to condescend upon the witnesses, which he might do, the writ being signed before the act of Parliament 1681.

Triplied for the pursuer: Date and place are essential to a writ, and cannot be supplied, nor were ever the names and designations of witnesses not mentioned in the body of the writ allowed to be supplied by a condescence, though the designations of witnesses whose names were inserted might be supplied.

The Lords found, That date and place are not essential to the validity of a writ, not being mentioned *inter substantialia* in the act of Parliament 1681; and found that the declaration being emitted before the making of the said statute, the designation of the witnesses may be supplied, though their names were not inserted in the body of the writ.

Forbes, p. 533.

1716. June 8.

JOHN WALKER *against* The REPRESENTATIVES of JAMES ADAMSON.

No. 124.

Witnesses to a subscription must know the subscriber.

Janet Handyside having disposed certain tenements in Edinburgh to John Walker, he pursues improbation, reduction and declarator of extinction of certain adjudications, to which the relict and representatives of James Adamson have right; for whom it was alleged, That the pursuer's title being a disposition from Janet Handyside, was null, because, by the 5th act, Parl. 1681, it is provided, That no witness shall subscribe as witness to any party's subscription, unless he then knew that party. *Ita est*, The witnesses to Janet Handyside's disposition did not know her to be the person designed in the disposition, and never saw her before or after; upon which allegiance the two subscribing witnesses being examined, one depones he never saw the subscriber of the disposition before, nor knew that there was such a person till the neighbours in Hastie's close declared to the deponent, that she was the daughter of John Handyside, merchant in Edinburgh, and at her subscribing, the said Janet declared to the deponent and two of her neighbours then present, that she was the daughter of the said John Handyside, upon the faith whereof the deponent subscribed as witness. The other