

## SECT. II.

## Deeds signed by Notaries.

1606. *January 31.* HEPBURN *against* The LAIRD of WAUCHTON.

Hepburn, brother to Mr. Patrick Hepburn of Gilmerton, pursued the Laird of Wauchton as heir to his father for spoliation and wrongous intromission of certain goods and corn pertaining to the pursuer's umquhile mother, to whom he was executor nominate. It was alleged that the testament produced could give no action, because it was neither subscribed by the party nor by a notary at her command. It was answered, it was subscribed by a Minister. It was duplied, That the answer was not relevant, because the subscriber of the testament was not Minister of the parish where the defunct dwelled and died, and albeit the act of Parliament gave power to Ministers to be notaries in testaments, yet that was not universal but in their own parishes only ; which the Lords found to be so by interlocutor, and found not the said testament a sufficient title. It was thereafter alleged by the pursuer, that in an action of transferring pursuit against this defender's father, decret was obtained against him upon this title. It was answered, that his omitting to quarrel the invalidity of the title might hurt him in that cause, because he compeared and omitted his defence, but it could not not prejudice him in any other cause. The Lords, as before, found the said testament no sufficient title.

*Haddington MS. No. 979.*

\* \* Kerse reports this case :

Tutory and testament found null, because the testament was subscribed by a Minister of another parish, not where the defunct dwelled the time of his decease, the proper Minister being present in the parish ; licet fuit testamentum inter liberos.

It is affirmed, that it wasso decided by the Commissaries, in a testament alleged made by Mr. Thomas Douglas against Wilson.

*Kerse MS. fol. 127.*

No. 32.

A Minister can supply the place of a notary to a testament only within his own parish.