

1725. *February 4.*

The CHILDREN of CAPTAIN MATTHEW CAMPBELL and their TUTORS, *against*
JOHN CAMPBELL of Shawfield, Younger.

No. 125.

Witnesses
found neces-
sary to a
bond of
presentation.

The said John Campbell, by his missive to the Captain wrote, "That whereas on his account the said Captain had given Mr. Leckie a release from prison for three months, he obliged himself, within the said time, to deliver him in the tolbooth of Edinburgh, or pay the sum due to the Captain by Leckie." The defender having failed to perform in terms of his letter, the Captain's children, as having right from their father, pursued John Campbell for payment of the debt.

It was objected to the writ, That it was of the nature of a bond of presentation, and being neither holograph nor signed before witnesses, was null and improbativ in law.

Answered: That it was rather of the nature of a missive or promissory note, which did not require any legal solemnities, and that missive letters were probative, though not holograph.

The Lords sustained the objection against the missive, but sustained a promise in the terms of the missive relevant by the defender's oath.

Act. Dun. Forbes. *Alt. Alex. Hay & H. Dalrymple, sen.* *Reporter, Lord Cowper.*
Edgar, p. 164.

1728. *February 13.* EARL OF DALKEITH *against* JOHN HENRYBOOK.

No. 126.

A deed granted by a minor with consent of his curators, being challenged, for this reason, That there were no witnesses to the subscription of the curators; answered, Witnesses are not necessary to the subscription of consenters, but only of principal parties, who are to be bound by the deed. The Lords found the act 1681 was general, and therefore sustained the objection. See APPENDIX.

Fol. Dic. v. 2. p. 538.

1730. *June.*HOME *against* DICKSON.

No. 127.

A tack signed by the principal parties, but not by the witnesses, being left thus incomplete in the hands of one of the two persons who were inserted as witnesses, he and the other, some days thereafter, put their names to the contract as witnesses, at the instigation of one of the parties. The Lords found the tack null, for the parties having broke up, without perfecting their contract, they were free, and could not afterwards be bound but by a new act of their own, interposing their consent to the subscription of the witnesses. See APPENDIX.

Fol. Dic. v. 2. p. 542.