exception from that rule, as appears from Mackenzie's Criminals, the case of Captain Barclay, where the witnesses were punished allenarly upon their own evidence, and several others, and especially by the act 1681, which supposes that the evidence must be by the witnesses own testimonies, because regularly the indirect manner of improbation is not competent while the direct *per testes insertos* is extant, and till the deed be improven, there can be no punishment of the witnesses. However, the Lords thought it better to give no judgment upon that matter, and therefore passed them over without notice.

No. 11. 1738, July 27. PROCURATOR-FISCAL OF ADMIRALTY *against* M'KENZIE.

See Note of No. 17, *voce* JURISDICTION.

(Erratum in the text,—instead of "general" read "generic.")

No. 12. 1738, Dec. 12. CHARTERIS *against* DAVIDSON.

The Lord sustained the objection, that one of the instrumentary witnesses to the contract between Redpath and this suspender Charteris was within the age of 14 years, notwithstanding the suspender acknowledges that the contract was signed by him; and repelled the allegeance of homologation, for they did not find the acts condescended on sufficient to infer homologation, *me referente.*

No. 13. 1738, Dec. 12. DR ARNOT *against* ELIZABETH YOUNG.

See Note of No. 4, *voce* PROOF.

No. 14. 1740, July 24. LEITH of Leithhall *against* GORDON of Law.

See Note of No. 5, *voce* COMPENSATION.

No. 16. 1742, July 22. THOMSON *against* BORTHWICK, *alias* STRAITON.

IN a suspension and reduction of a bond by a principal and cautioner, by the cautioner, as granted by him in minority, when he had curators, and without their consent; and it being alleged, that, at granting the bond, he said he was major, and both parties allowed to prove;—upon the proof, the minority and having curators was proved, though he was within six months of being major. For proving the allegeance, that *majorem se dixit*, the creditor adduced the instrumentary witnesses to the bond, who were his own father and brother, and proved, that the creditor not being to be present when the money was to be paid, wrote to his father that he doubted if the cautioner was of age;—that he put the question to him, and he said he was of age. Two questions occurred, 1st, Whether this was proveable by witnesses? because of a decision in Durie, 27th February 1637, (Dict. No. 156, p. 9025.); 2dly, and chiefly, Whether the creditor's father and brother, though instrumentary witnesses, were habile? (for they were adduced before Commissioners, and the objection referred to the Court;) and it carried that they were not. In which I did not vote, for I doubted much whether they were not necessary witnesses to