

needs not the support of witnesses, unless it be challenged in an improbation. On the other hand, if it does not make a *literarum obligatio*, it cannot be the foundation of an action, it can have no effect in law; it may safely be laid aside, leaving the party who founds upon it to bring evidence of his claim in the best shape he can; and, when the matter rests there, it is obvious that witnesses cannot be admitted to prove a loan of money, or indeed to prove the delivery of money in any case. Than this no maxim is more fixed; nay, the practice of the Court goes a great deal further; if a bond be excepted against, as wanting some of the solemnities of the act 1681, it is not found relevant to prove the subscription by the debtor's oath, in order to support the bond; resting owing must be referred to his oath, or nothing; and this founded on the principles above laid down. Now, this argument concludes *a fortiori* to the present case. A bond wanting some of the solemnities of the act 1681, may be a good *literarum obligatio de jure communi*; and it may be plausibly argued, That if the debtor owns his subscription, he ought to be barred from making any objection on the act. But, with regard to the present point, if the deed pursued on be neither a bill nor a holograph writing, it is absolutely good for nothing; consequently not capable of being converted into *literarum obligatio*, by the support of any evidence whatever; and, if it could not be supported by Mr Wiseman's acknowledgment of his subscription, supposing him alive, but that resting owing behaved to be referred to his oath, far less can it be supported by extraneous witnesses.

THE LORDS adhered. See WRIT.

Fol. Dic. v. 3. p. 73. C. Home, No. 130. p. 218.

1751. February 19.

HUGH CLERK against EDWARD KER.

EDWARD KER, merchant, and Hugh Clerk ship-master, in Irvine, submitted certain differences betwixt them; which they executed, by depositing in the hands of the arbiters accepted bills to each other for L. 20 Sterling; and mutual discharges; And thereon the arbiters, finding Ker liable in L. 13 gave up his bill to Clerk, causing him mark a payment of L. 7 on the back.

Ker suspended for this, among other reasons, That the bill was null, being granted instead of a submission; which ought to have been executed by a formal writ: Bills are allowed for the conveniency of commerce; but ought not to be sustained when they deviate from their proper nature.

Answered, A submission may be verbal; and it would have been a good way of making it effectual, to have deposited money to be disposed of by the arbiters: Bills are considered as money; so there was here no deviating from the proper nature of a bill.

THE LORDS found the letters orderly proceeded.

Act. Pringle.

Alt. Lockhart.

Fol. Dic. v. 3. p. 74. D. Falconer, v. 2. No 199. p. 241.

No 10.
Two parties submitted a law-suit, by accepting bills to each other, which they lodged with the arbiter, to be given to the party who should be found in the right. The bills were found good, notwithstanding of their conditional nature.