

1786. *June 23.*SIR ARCHIBALD EDMONSTONE, Baronet, *against* WILLIAM LANG.

William Lang granted a missive letter, binding himself as cautioner for his son-in-law, who was a tenant of Sir Archibald Edmonstone's.

The writing was not holograph, and it wanted witnesses; but the genuineness of the subscription could not be denied.

Being sued by Sir Archibald Edmonstone, William Lang

Pleaded: That his letter imported a cautionary obligation, to the constitution of which the solemnities prescribed by the statute 1681 were essentially requisite; 25th November 1782, Wallace *against* Wallace, No. 333. p. 17056.

The Court considered the point as now solemnly fixed by the later decisions, that missive letters of the nature of the one here found on were not obligatory or actionable. The forms made necessary by the statute, it was observed, were not intended solely by way of proof, or to guard against forgery, of which there was no danger when the party acknowledges his subscription, but were also required in point of solemnity, and therefore on no account to be dispensed with.

The judgment of the Lord Ordinary was in these terms:

“In respect the defender does not deny his subscription libelled on, nor that his son-in-law has entered into possession of the subjects, for the rents of which the defender, by the said letter, agreed to become cautioner, repels the defences; and decerns.”

But after advising a reclaiming petition for the defender, with answers for the pursuer,

“The Lords found, That the writing in question was not obligatory; and therefore altered the Lord Ordinary's interlocutor.”

Lord Ordinary, *Ankerville.* Act. *Craig.* Alt. *Morthland.* Clerk, *Sinclair,*  
C. *Fac. Coll. No. 277. p. 427.*

\* \* \* The Court pronounced a decision on the same principle, 9th December 1785, Robert Walker *against* Robert Duncan. See APPENDIX.

1790. *May 22.* M'FARLANE *against* GRIEVE.

No. 336.

A lease wanting the name and designation of the writer, was reduced at the instance of the granter, though he acknowledged his subscription.

*Fac. Coll.*

\* \* \* This case is No. 51. p. 8459. *voce* LOCUS POENITENTIAE.

No. 335.

Such cautionary obligations only valid in which the statutory solemnities have been observed.