

1732. *January 7.* SEABOX of QUEENSFERRY *against* STEWART.

No. 128.

An obligation wanting witnesses was sustained, the parties, who were many, being presumed to have been witnesses to one another's subscription. See APPENDIX.

*Fol. Dic. v. 2. p. 539.*

1736. *December 8.* GABRIEL NAPIER *against* LORD ELPHINSTON.

No. 129.

The act 5, Parl. 1681, requires that the witnesses be designed in the body of the writ, &c. This clause was found not to extend to the execution of a summons, but only of inhibitions, interdictions, hornings, or arrestments. See APPENDIX.

*Fol. Dic. v. 2. p. 541.*

1738. *January 26. and November 7.* Low *against* BEATSON.

No. 130.

The nullity objected to an old bond of thirlage, of date long before the 1681, and subscribed by notaries, That although four witnesses were subscribing, yet one of them was not inserted in the body of the deed, was found not suppliable, January 26, 1738.

If the not inserting a witness, before the act 1681, be suppliable?

Some of the Lords were of a different opinion: They thought that the subscription of the witness by his own hand was as effectual an inserting of him, as the naming him in the deed by the hand of the writer would have been; and that therefore the omission in this case was no less suppliable by condescendence on his designation, than if his name had been inserted in the bond; and by a petition, wherein that reason was urged, the point was kept open.

*Vide* July 14, 1739, Tit. THIRLAGE, No. 77. p. 16017.

*Kilkerran, No. 1. p. 604.*

1738. *December 12.* DAVIDSON *against* CHARTERIS.

No. 131.

This objection was sustained to annul a contract, that one of the two instrumentary witnesses was a few days short of 14 years of age, when he signed witness.

The objection to an instrumentary witness, that he was under age, sustained; and the objector's oath, upon a reference that he truly subscribed, refused.

In this case, a petition for the charger, offering to prove by the suspender's oath, that he had truly subscribed the contract, was refused without answers, January 17, 1739.

*Kilkerran, No. 2. p. 604.*