

1620, that the ship nor any in her ever returned, nor were heard of, and so behoved to be reputed dead, and to have perished in the said ship, with all the rest; which was found relevant.

No 323.

Haddington, MS. No 2639.

1628. July 8. DUNBAR against LESLY.

No 324.

SEMEL baro, semper baro, is only a presumption nisi contrarium probetur.

Fol. Dic. v. 2. p. 164. Durie.

*** This case is No 15. p. 5392. voce HEIRSHIP MOVEABLES.

*** See a similar decision, 26th February 1663, Cuthbert against Monro, No 24. p. 9666. voce PASSIVE TITLE.

1663. February 14. ROBERTSON against BUCHANNAN.

No 325.

ROBERTSON pursues Buchanan to repay to him a sum of money; who *alleged*, That his bond bearing to pay this charger, or to Arthur Buchanan, his brother, it is *alternative, et electio est debitoris*, and he has compensation against Arthur, which is equivalent as if he had paid him.

THE LORDS repelled this allegiance; and found, that the charger being deliverer of the money, and now haver of the bond, it could import no more but that the other brother was adjected for the charger's behoof, and that there is no option to the debtor in such cases.

Stair, v. I. p. 179.

1665. February 15. PATRICK MILNE against ALEXANDER MURRAY.

No 326.

ALEXANDER MURRAY having subscribed a bond at Lubbin, in sole obligation to pay the sum of 155 polls Florence; at the Feast of St Simon, under pain of doubling the sum, Patrick Milne pursues for payment of the debt. THE LORDS found, in regard of the designation of Alexander Murray being general, and that there are more persons of that name, The pursuer behoved to prove this Alexander Murray, defender, to be the subscriber of the bond; which he always denied.

One, of the name in a deed, not presumed to be the subscriber, unless designed.