

but *scripto vel juramento*. If Spruce had been present, they would have referred the truth of the bargain to his oath; or if they had had only to do with Spruce, they would have gotten him holden as confessed; but the bills being assigned for a cause onerous, the assignee would not suffer the cedent to depone to his prejudice.

This case seemed to be very singular. The Lords were convinced there was a clear cheat in the thing, on Spruce's part, whereof Lyell was not free; and they knew not how to help the merchants and to preserve the law, whereby it is provided that nothing above L.100 Scots can be proven by witnesses. And yet seeing there was a double produced in process, attested by two notaries, of the receipt of L.30 relative to the bargain, the principal being in Spruce's own hands; therefore the Lords ordained him to be cited to produce the principal, with certification that if he did not, they would hold that double produced as relevant to infer the bargain above written: which wants not its own difficulties.

*Act. Dinmuire. Alt. Wallace.*

*Advocates' MS. folio 57.*

1667. *June 10.* CAPTAIN JOHNSTON *against* JAMES CUNYGHAME.

THERE is a bond granted by James Cunyghame to Captain Johnston and Janet Cunyghame his wife, for the sum of ———, &c. payable to them, their heirs, executors, and assignees, bearing annualrent to the term and thereafter. After the wife's decease, Johnston charging the debtor, he suspends; at the discussing, compearance is made by Janet Cunyghame's executors, who claimed the half of the sum charged for, because, by the conception of the bond, the sum being payable to their heirs jointly, the same ought to divide; specially the sum being moveable, whereas in heritage it is otherwise, and belongs to the man, as *dignior persona*; for which there was adduced a practise *in anno 1623*, betwixt *Dougall and Hendersone*. The Lords found the sum wholly to belong to the man, and no part of it to the wife's executors.

*Act. Cunyghame and Dinmuire. Alt. Brown. Advocates' MS. folio 58.*

1667. *June 20.* NIMMO *against* THOMAS MURRAY and his CURATORS.

ONE Nimmo having lent to Thomas Murray and his curators 1000 merks, which bond was subscribed by the minor and his curators; Nimmo charging them to pay, he suspends on this reason, that the bond cannot tie him by a payment, because he being minor, he must prove that it was in *rem ejus versum*, otherwise the granting of the bond by him and his curators is null, as granted by him in his minority to his lesion.

ANSWER,—The bond was good, because minors, with consent of their curators, subscribing bonds, they are effectual in law; and that it was not proper for the