

No 299. the true sum contained in his bond subscribed before witnesses. It was *replied*, That the testament being only an adminicle, did only instruct the sum contained in the testament, and could not hinder the suspender to pursue an improbation of the bond charged upon, because it contained a greater sum, to which if he would restrict the charge, he was content to pass from the improbation. It was *duplied*, That the offer to restrict being a clear acknowledgment that there was a bond granted by the defunct, he could never offer to improve the bond charged upon, unless such a bond were produced, bearing only 5000 merks. THE LORDS having seriously considered the case, did find, that any allegiance founded upon an adminicle which differed in the sum from the bond craved to be improved, could not hinder the improbation of the principal bond, whereupon decree was given, especially seeing the testament testamentary confirmed was sufficient to make the suspender liable, without any bond for the sum confirmed, but doth not hinder the suspender, who had confirmed, to pursue an improbation of a bond containing a greater sum.

Gosford, MS. No 819. p. 516.

No 300, 1684. *January.* ROBERT FOTHERINGHAME *against* CAPTAIN AGNEW.

IN an action for payment of debt, at the instance of an assignee, the defender proponed compensation upon a debt due to him by the cedent, which he offered to prove by the cedent's oath.

Answered; The cedent's oath is not competent against the pursuer, whose assignation is for an onerous cause.

Replied for the defender; The onerous cause is not adequate, and, in so far as it is not adequate, the assignation is without an onerous cause, and the cedent's oath competent *pro tanto*.

THE LORDS were of opinion, that the pursuer should allége the cause of his assignation to be both onerous and adequate; but, before answer, they ordained him to condescend upon the onerous cause, that they might see if it was fully, or near adequate to the sums contained in the assignation.

Fol. Dic. v. 2. p. 236. Harcarse, (COMPENSATION.) No 253. p. 61.

No 301. 1702. *November 14.* ANDERSON *against* DEMPSTER.

A TRUSTEE in lands having sold the same for a just price, his oath acknowledging the trust found not probative against the purchaser.

Fol. Dic. v. 2. p. 235. Fountainhall.

*** This case is No 45. p. 10213, *voce* PERSONAL AND REAL.