

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

creditor either to allege or to prove it was in *rem minoris versum*, seeing no credit would be given to minors, nor no traffic could be held with them hereafter.

The Lords found the creditor behoved to say the sum lent was *in rem versum*, otherwise that they would suspend the letters simpliciter, notwithstanding the bond was signed by the minor and his curators.

Many of the Lords were of another mind ; especially my Lord Advocate.

*Act.* Sinclair. *Alt.* Lockhart.

*Advocates' MS. folio 58.*

1667. *June 29.* Jo. LIDDELL *against* THE HERITORS of Fordungennie.

MR. JO. LIDDELL being in March 1667, transported from the parish of Fordungennie to Scoone, and charging the heritors for the half year's stipend due from Martinmas 1666 to Whitsunday 1667, my Lord Advocate, who heard the cause, was of opinion that he could not have that half year's stipend from which he was transported, because it inferred plurality of benefices, which was reprobated by the canon law, and that he could not be minister at both kirks. Urged on the other hand, a minister was not in the case of a liferenter, who dying before the term, had no right. And yet the Lords in the very like case betwixt Mr. Thomas Kirkcaldie and the heritors of Carnwath, found the minister to have right to both stipends, and that it did not infer plurality of benefices.

*Act.* Dinmuire. *Alt.* Lockhart.

*Advocates' MS. folio 58.*

The same minister pursuing for the price of his house, which he had builded by order from the bishop, after a previous visitation ; ALLEGED, by act of Parliament, the heritors having made the manse once free, the minister was bound to uphold it on his own charges ; and having ruined by the fault of the last incumbent, he ought to pursue him and his representatives.

The Lords inclined to make the heritors liable for the superplus of 500 merks, being 1000 merks.

*Advocates' MS. folio 58.*

1667. *January —, and June 29.* ADAM STEVIN *against* BAILIE BOYD.

*January.*—BAILIE BOYD being pursued by his stepson, Adam Stevin, for count, reckoning, and payment-making to him of his portion natural, the Bailie being his tutor and curator :—

Wherein the Lords found a tutor not liable in diligence for such debts as either the debtor thereof was known to be irresponsal, or were so reputed and holden the time of his office ; because he was not bound to expend his pupil's estate unprofitably, or whereof he would get no allowance, nor was he bound to expend his own. And they found this allegiance relevant to be proven *prout*