

1667. *January 22.* MR. JOHN MAIR *against* STEWART of Shambelly.

No. 11.
Effect of
deeds granted
while under
caption.

Mr. John Mair, Minister of Traquhair, having obtained decret against Shambelly, and the parishioners, to pay him 545 merks, expended for reparation of the manse, and to meet and stent themselves for that effect ; upon which decret, he took Shambelly with caption, whereupon he gave him a bond of £.80 for his part : Shambelly now suspends the bond on this reason, that albeit it bears borrowed money, he offers to prove by the charger's oath, that it was granted for his part of that stent, and that his proportion thereof, casting the sum according to the valuation of the parish, would not exceed 40 merks, and that he granted this bond for fear of imprisonment. It was answered, The reason was not relevant to take away the suspender's bond, being *major. sciens et prudens* ; and there was here no *justus metus*, because the caption was a lawful diligence, so that the giving of the bond was a transaction of the parties, which is a strong obligation. It was answered, That the suspender when he was taken at his house, was sick and unable to travel ; yet the messenger would carry him away, and being at the tolbooth, gave the bond rather than in that case to go to prison, which was an irregular force, and a just cause of fear ; but this addition was not proponed peremptorily.

The Lords repelled the reason of suspension, unless the said addition were also instructed *instanter*, otherwise it could only be reserved by reduction, *ex metus causa*.

Stair, v. 1. p. 429

1668. *July 3.* THOMAS RUE *against* ANDREW HOUSTON.

No. 12.
Same subject.

Andrew Houston and Adam Mushet, being tacksmen of the Excise, did employ Thomas Rue to be their collector, and gave him a salary of £.30 Sterling for a year. Thereafter he pursued Andrew Houston upon his promise, to give him the like salary for the next year, and in absence obtained him to be holden as confessed and decerned ; which being suspended, he obtained protestation, and therefore raised caption, and apprehended Andrew Houston at Wigton, who gave him a bond of 500 merks, and got a discharge ; and being charged upon the bond of 500 merks, he suspends on these reasons, That Thomas Rue had granted a general discharge to Adam Mushet, who was his conjunct and *correus debendi* after the alleged service, which discharged Mushet, and consequently Houston his partner ; *2dly*, The decret was for salary, and it was offered to be proved, that Rue (for his malversation) was by warrant from General Monk, excluded from collection that year, and by the discharge of the decret, and this bond, both of the same date and witnesses, it did appear that this bond was granted for the decret ; and if the decret was reduced, by the reduction thereof depending, the