

1751. February 5. DAVID SLOAN *against* JOHN MACMILLAN.

No. 7.

A letter promising to bind conjunctly for a bargain, was found to bind the writer conjunctly and severally.

JOHN MACMILLAN in Glenlaggan, sent by Alexander Macguffock to David Sloan in Forrest, a missive, in these terms :—" Sir, I desire you may sell your tups and ewes as cheap as possible, for your wedders is too dear ; delay taking security till I come home, and I shall bind conjunctly with him for your sheep." Macguffock bargained for the tups and ewes, and took them away, together with the wedders which had been formerly agreed for : Sloan obtained a decret before the Steward of Kirkcudbright for the whole price in so far as resting. And in a suspension, the Lord Ordinary, 4th January, 1750, " Found the letter did subject the suspender in payment of the whole price of the sheep."

Pleaded in a reclaiming bill, he is bound only conjunctly.

*2dly*, Whereas the charger has alleged, that the suspender has already paid more than the half, which explains his letter ; this is not true, for he has paid within the half ; and the charger is paid something more, which exceeds the half, by a draught of Macguffock's

Answered : The suspender delivered in Macguffock's draught, which was payment by him : The meaning of the letter is, that he should pay the whole ; it promises that he should become bound ; and if they had accepted a bill for the price, each would have been bound for the whole.

The Lords adhered.

Act. Boswell.

Alt. Macdowal.

Clerk, Forbes.

*Fol. Dic. v. 4. p. 294. D. Falconer, v. 2. No. 190. p. 229.*

SECT. III.

Indivisible Prestation.

1669. July 15.

MR. ARCHIBALD DENNISTON *against* SEMPLE of Fullwood.

No. 8.

Three overseers of a minor became bound to cause the minor grant a certain relief.

MR. ARCHIBALD DENNISTON being left tutor to the three daughters of Denniston of Cowgrain, and Fullwood, elder and younger, and the tutor's brother, being left overseers, by articles of agreement betwixt the overseers and the tutors, they are bound to cause the minors' curators give security for 4,000 merks, and to relieve him of the sum of 17,000 merks, which he had paid, and was engaged for