1683. *November* 6. SCHAW *against* VANSE.

No 490. THE confession of a minor in a criminal matter, was found probative against himself, and not reducible *ex capite minorennitatis et læsionis.*

Fol. Dic. v. 2. *p.* 257. *Falconer. Fountainhall.*

*** This case is No 5. p. 9354, *voce* OATH.

1703. *January* 21.

AGNES GRAY and STEWART her Husband *against* Mr ROBERT SCOTT, Doctor of Divinity.

No 491. Deed *inter virum et uxorem.* THE said Doctor granted bond to Isobel Cullen, his then spouse, bearing he had gotten up bonds from her to the value of 1000 merks, therefore he obliged himself to pay to her the said sum of 1000 merks; and this bond being assigned by her to Agnes Gray, a daughter of a former marriage, she pursues the Doctor, who *alleged*, 1*mo*, The assignation was null, because the date and witnesses are clearly, by ocular inspection, filled up by a different hand from the body, and it does not bear who is the filler up, and so is null by the act of Parliament 1681; 2*do*, This assignation is granted by a wife *stante matrimonio*, without her husband's concourse, and so is *ipso jure* null; 3*tio*, This bond being granted to a wife, it falls back and recurs to the husband *jure mariti*, and so is extinct by his becoming both debtor and creditor; and at most is but *donatio inter virum et uxorem*, and so revokable, and actually revoked. *Answered* to *first*, All that our law requires is to mention the writer of the body of the writ, which this does; and it being signed at London, one of the witnesses has filled up the date and designations; To the *second*, This bond assigned being granted by the husband himself, there was no need of his consent to the assignation, and the pursuer will confirm it, if the LORDS require it, which will afford her a sufficient title; To the *third*, *answered*, It can be reputed no donation, for the bond itself bears the onerous causes for which it was given, viz. his receiving the equivalent sum from his wife in bonds; 2*do*, The presumption that it was the husband's own means, and so recurred to him *jure mariti*, ceases; for when Dr Scot married her, she had been a widow for several years, and had made up that sum out of her jointure, and he acknowledges by his bond that the sums were her's, *et interpretatio est semper in dubio facienda contra proferentem, et ut actus valeat potius quam pereat*; and unless he produce the bonds assigned to him, the presumption lies that they were heritable, bearing annualrent, and so not carried by his *jus mariti*; and that they were dated before his marriage to her, and so could not be *ex ejus bonis*; for though law presumes what a wife has to be acquired *ex bonis mariti ad evitandam suspicionem*

turpis ex corpore suo quæstus, l. 51. *D. De donat, inter vir. et ux.* yet that can be taken away by stronger presumptions, as are here in this case, that she had an opulent liferent out of which she could easily spare and lay aside this small sum of 1000 merks; and that it was heritable, he having declared nothing to the contrary in his bond, as certainly he would have done if it had been otherwise. The Doctor insinuated something of his wife's melancholy circumstances at that time, which moved him to comply with her humour in granting this bond. The question was, on whom the *onus probandi* fell, whether on Agnes Gray, the pursuer, that these bonds given to the Doctor were the product of her jointure, and dated before her second marriage, and bore annualrent, or if the Doctor, defender, should prove the bonds were posterior to his marriage with her, and so being *stante matrimonio*, were presumed to be made up of his means? THE LORDS repelled the first objection as to the wanting the name of the filler up of the date and witnesses; and sustained the second objection, but found it suppliable by her confirming exeeutor to her mother; and as to the third, in this circumstantiate case, found the probation fell on the pursuer, Agnes Gray, as to the points above mentioned; on which she might get Doctor Scott's oath if she pleased. No 491.

Fol. Dic. v. 2. *p.* 257. *Fountainhall, v.* 2. *p.* 175.

SECT. IV.

Deed without witnesses, how far probative.

1611. *November* 28. LORD FORBES *against* MARQUIS of HUNTLY.

No 492.
A holograph discharge without witnesses, by a mother to her son, found not to prove its date against a singular successor in the mother's right.

MY Lord Forbes being infeft by Robert Joussie, with consent of James Curll, in the lands of Inheane, and made assignee by Robert Joussie to the contract whereby the Marquis of Huntly was obliged to infeft Robert Joussie, his heirs and assignees, in the said lands, enter him to the possession thereof at Martinmas 1593, and obtain to him Peter Mortimer's renunciation of the said lands, charged the Marquis upon the said contract. The Marquis suspended the charge for the said Mortimer's renunciation, because he had delivered it to James Curll *in anno* 1593, and reported his acquittance, all written and subscribed with his own hand. It was *alleged*, That the acquittance could not prove against my Lord Forbes, because by the act of Parliament *anno* 1540, all writs of consequence wanting witnesses were null, and this acquittance wanted witnesses. It was *replied*, That it was holograph, and so needed no witnesses. It was *answered*, That giving, and not granting that it were holograph, it