

1671. July 6. BOWARS *against* The LADY COUPER and THOMAS BANNATINE,
Donatar.

IN the foresaid action, at Bowars' instance, against the Lady Couper; comparence being made for Thomas Bannatine, who produced his gift to the Lord Couper's escheat, with a summons of general declarator, he thereupon ALLEGED,—That he ought to be preferred to the Bowars; because the Lord Couper died at the horn, and his escheat belonging to the King, he, as donatar, had right to the whole moveables disponed to the lady.

It was ANSWERED for the said Bowars, That, their father having obtained decret against the Lord Couper, in his own time, for payment of his bygone stipend, and having pursued the lady as intromitter,—the Lords, by their interlocutor, had found her liable, and debtor, notwithstanding of her disposition; whereupon litiscontestation was made, and, by an act extracted, her intromission admitted to their probation; in respect whereof a donatar, who had but lately obtained a gift, and whereupon no diligence was done, and not so much as general declarator obtained, could not compete with them.

The Lords did prefer the donatar, and admitted him for his interest. Which was very hard.

Page 181.

1671. July 7. WALLACE *against* CORSANE.

CORSANE, and several other heritors of the shire of Dumfries, having given bond to Wallace for 300 merks; whereupon being charged, did suspend upon this reason,—That the bond, bearing that the granters did oblige themselves, and their heirs, and not conjunctly and severally, they were only liable *pro rata*, and none of them for the whole debt.

It was ANSWERED, That it was clear, by the bond, they were all bound, conjunctly and severally, in so far as, in the obligatory part for payment of the annualrents, it is expressly made, that the granters obliged themselves, conjunctly and severally, as said is; which words show that their meaning was, that they were so obliged for the principal sum; and evince that these words, conjunctly and severally, were only omitted and left out by the negligence of the notary, who was writer of the bond; which likewise appears by the clause of relief of the bond, which bears, that every one of the granters are obliged to relieve others of their proportional part; which was to no purpose, if they were not bound conjunctly and severally.

It was ANSWERED, That the bond was opposed; which being conceived, as to the principal sum, that the granters were only obliged, and their heirs, without mentioning conjunctly and severally, in law none of them was liable but for their own part; and, albeit it might appear to have been an omission of the notary, yet that cannot be supplied to their prejudice, against the express terms of the bond, by any posterior clauses, and the meaning thereof.

The Lords did find the letters orderly proceeded against the suspender, who was but one of the subscribers; and found, That the whole bond, being considered as it was subscribed, it was thereby clear that the debtors did acknow-