

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, 1mo*, 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; *2do*, This assignation is granted by a wife *stante matrimonio*, without her husband's concurrence, and so is *ipso jure* null; *3tio*, 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; *2do*, 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 suspensionem*