

*tractus*, and given in contemplation of the ship's returning, and cargo's being delivered at the respective ports, which hath failed.

REPLIED for the pursuer,—That he knew nothing of the ship's insufficiency, and he sold her *talis qualis*. Again, if through insufficiency she had perished in the voyage, the bond had not then indeed been purified: but insufficiency in a harbour, is capable of refitment.

The Lords found, That the ship and cargo being sold in America, and the price thereof returned, the condition of the bond is not purified: and, therefore, assoilvied from the three hundred pounds Sterling, but decerned for the thirty pounds.

Page 194.

---

1707. December 23. JOHN CRAWFORD, JOHN GAY, and JOHN FIFE, indwellers in Newark, *contra* Robert Cunninghame, Writer in Edinburgh.

ROBERT CUNNINGHAME being accused at the instance of John Crawford, John Gay, and John Fife, for giving out an extract of a bond granted by them to his father, bearing the two witnesses inserted in the body to be subscribing, whereas only one of them subscribed; industriously to validate the null bond: he alleged for his exculpation, that he could have no evil design in so doing, seeing, 1. The bond was valid without any witnesses, the subscribing parties being in effect witnesses to one another; as was decided betwixt Sir Thomas Kennedy and Sir Alexander Brand: and if Robert Cunninghame had had any fraudulent design to supply a defect, he would have made the principal writ conform to the extract. 2. Many have fallen in the like, and greater mistakes, by raising hornings against persons inserted in the body of a bond, and not subscribing, and adjudication against such: registrating the copy of a paper for a principal, and raising diligence thereon against the designed granter; as in the case of Sanderson *contra* Dougalstoun, for which no punishment was inflicted.

ANSWERED for the accusers,—The worst actions are not accompanied with the greatest prudence; and 'tis but weak reasoning, to infer either innocence or fraud from effects and consequences; the nature of actions being distinguished by the presumed intention of the actors. But that Robert Cunninghame's giving out an extract disconform to the principal, was not an innocent mistake, appears from his ingiring himself to write that extract in favours of his father, albeit he was not an ordinary writer of extracts. Fifty several debtors subscribing a bond granted by them, would not support the writ without witnesses; though it be otherwise in mutual contracts, which was Sir Thomas Kennedy's case with Sir Alexander Brand; because there, every contractor is a debtor for his own performance.

The Lords discharged the said Robert Cunninghame for ever to meddle in any business in the Clerks Chambers, or about the Parliament House; and ordered him to prison during their pleasure.