

## No 46.

A bond bearing for borrowed money, and renouncing all exceptions in the contrary, sustained, though it was granted for the cure of a disease, and the debtor offered to prove, that it was not effectually cured, but broke out, after granting the bond, worse than ever, through the creditor's negligence.

1708. December 24. Dr ROBERT TROTTER *against* Captain JOHN TELFER.

DR TROTTER having charged Captain Telfer for payment of a bond of L. 10 Sterling, he suspended, upon this reason, that the bond was granted for the cure of a malady the suspender laboured under, which was ineffectual by the Doctor's negligence, in not overseeing the dispenser of the medicaments, and by misapplication in the quantity of these medicaments.

*Answered* for the charger; *imo*, If physicians should be called in question for their pretended misapplications, every unfortunate accident upon a patient's health would be a pretence for repetition of physicians fees, which is as absurd as to repeat a lawyer's fees when the cause is determined against his client. *2do*, The bond charged on bearing for borrowed money, and renouncing all exceptions in the contrary, and being delivered after performing of the cure, the suspender could not recur to allege upon any pretended misapplications, &c. whatever he might have done before.

*Replied* for the suspender; *imo*, It is true physicians are seldom quarrelled for their misapplications and faults, the grave buries many of these, and many physicians have that regard to their own, and their patient's credit, as not to bring questions of this kind before any judicature; but, it is as true, physicians are tied to the laws, and the great trust these have of mens lives, requires more diligence than in other offices, *L. 18. Pr. L. 44. D. Ad L. Aquiliam*. The case of an advocate is not the same, who may not be to blame when the Judge determines against his client; and yet, if he were grossly negligent; there is no reason for his getting an honorary. *2do*, It doth not alter the case, that the bond was granted after the cure was thought to be performed, when it was not, since *ignorantia facti nocet nemini*.

THE LORDS repelled the reason of suspension.

*Fol. Dic. v. 1. p. 430. Forbes, p. 291.*

## No 47.

A forfeiture having been rescinded, a bond previously granted, was found to impute *pro tanto*, in satisfaction of the claims for which the obligant, in virtue of the act rescissory, might have been accountable.

1723. December 7.

EARL of DELORAIN *against* The DUTCHESS of BUCCLEUGH.

IN the year 1688, the Dutchess of Buccleugh being at that time possessed, by a gift from the Crown, of the Duke of Monmouth's personal estate, in consideration of this, and that her son, the Earl of Delorain, was not otherwise provided, she granted him a bond of provision of L. 26,000 Sterling. The Duke's forfeiture, amongst others, being rescinded by the general act rescissory in the year 1690, the Earl of Delorain, upon that medium, insisted in a process against her Grace, to account to him for the Duke of Monmouth's personal estate, having right thereto as executor decerned to the Duke his father. The