ingerente, as the defender proponed, and *alleged*, That the reason founded upon *Senatus consult Turpill.* specially where there is impetrate *absolutio principis* it liberates *a pœna*; yet the pursuer *replied*, That the law permitting such transactions, it is a parte rei, sed non a parte accusatoris, nam accusator turpiter transigit, specially where he is not party interested in the accusation, and where the party accused, neither has remission, nor declines the trial, but offers himself to the Justice; notwithstanding whereof, the transaction was sustained, and absolvitor granted to the defender; for the LORDS found, That any bargain, or bond given by the party accused to him who urged the accusation, and whereupon the accusation deserted (albeit he to whom the bond was made, was not the party interested), the same could not be retreated upon that ground, specially by him who made the bond; but in this cause, the King had allowed of this transaction, by his Majesty's warrant, and also had granted remission to the party, which his Majesty willed not to be expede, while the bond and transaction were performed to the Earl of Murray. No 66.

Act. *Nicolson* & *Aiton.* Alt. *Advocatus* & *Stuart.* Clerk, *Gibson.*

Fol. Dic. v. 2. *p.* 219. *Durie, p.* 483.

1631. *February* 18. HOUSTON *against* HOUSTON.

No 67.
A nuncupative testament cannot be proved by witnesses, to take away a former legacy constituted by writ.

IN this cause, mentioned 13th and 20th January 1631, No 5. p. 8049, the LORDS now found the allegeance, offering to improve that bond, where it had the two initial letters of the maker's name, was not receivable, but repelled the same, seeing it was made in Ireland, according to the English law; conform whereto bonds, which are sealed by the maker, and bearing, to be sealed and delivered in presence of witnesses, as this bond bore, are valid, albeit not subscribed by the parties; also the LORDS found, that this bond, albeit reputed as a legacy, yet being extant in a writ, was not to be taken away by an allegeance of a posterior nuncupative testament, made by the granter of the bond, he being then upon the sea within the ship, whereby he revoked all preceding legacies made by him; and which the defender offered to prove, by the mariners present for the time within the ship, who saw and heard the same, and which being quasi testamentum militare, et nuncupativum, licet non in scriptis, the defender *alleged*, was sufficient to evacuate this prior bond, it being found of the nature of a legacy only; which was repelled, for they found, that this bond in writ, was not revokable, by any such posterior deed, to be proved only by witnesess, there being no writ to verify the same.

Fol. Dic. v. 2. *p.* 223. *Durie, p.* 571.