

No 471.

the granter, for such a course of years, when that diligence was repeatedly notified to her, must presume her sense of the justness of the debt; *2do*, Mr Pringle being an onerous assignee, the oath of Shearer, as his cedent, cannot be good against him; far less can the oath of a trustee, such as Shearer was for Graham, his real cedent. Further, the oath of Shearer does not disprove the cause of granting expressed in the bond; because it only imports, that he paid no money to the granter; which must be true in every case where a bond is taken in a trustee's name, though the money be truly advanced by the real creditor. And as to Montgomery, he is no better than a single witness, whose oath cannot take away a written obligation; *3tio*, It is sufficient for the assignee to the bond, especially in a question with the granter, that he proves the onerous cause by the bond itself, duly executed. Nor can her creditor, Mr Lothian, be in a better case. Neither of them have proved, that the bond was granted *spe numerandæ pecuniæ*, and that the money was never paid; and, supposing the narrative had been proved false, that would only give ground for presuming the bond gratuitous; which would not annul it, or lessen its effect, as still a debt is thereby established, if no fraud is proved to have been committed in the obtaining it.

Replied; It has been admitted by Mr Pringle, that no value was paid to the granter either by Shearer or Graham; which, *per se*, clearly disproves the onerous cause mentioned in the bond; and neither Mr Pringle nor his uncle ever were properly onerous assignees, but only assignees in security; and now this competition is carried on in his name by the heir of Graham his debtor.

This case appeared to be attended with a good deal of difficulty; and the Court, by one interlocutor, found the bond not binding; but it afterwards carried to sustain it.

“THE LORDS repelled the objection to the bond.”

For the Objectors, *Pat. Murray, Hamilton-Gordon*. For Pringle, *Dav. Rae. Clerk, Justice*.
D. R. *Fol. Dic. v. 4. p. 168. Fac. Col. No 207. p. 370.*

S E C T. II.

In what cases a Private Deed not probative against the Heir.

No 472.
Found that a
bastard could
not prejudge

1623. December 9. & 10. — against ALEXANDER.

THE donator of the bastardy of George Hill pursued the defunct's debtor to pay to him the sum of 100 merks, which he was obliged by bond to pay to the

said umquhile George Hill. It was *excepted* by Isobel Alexander, That the defender should be assoilzied, because George Hill had upon his death-bed declared upon his salvation, that the money was not his, but his name only borrowed to the behoof of the said Isobel, to whom he directed one David Craw to deliver the said bond to Isobel Alexander, as her evident, who also offered to prove, that she had lent and delivered with her own hands the sum to the debtor, and since that time obtained a decreet against him before the Sheriff for the sum; which exception the LORDS found relevant, 9th December 1623. This interlocutor was retreated, and the donatar preferred, 10th December 1623.

Fol. Dic. v. 2. p. 255. Haddington, MS. No 2944.

No 472.
the King of a sum resting to him, by declaring on death-bed that it did not belong to him.

1632. July 13.

FAIRHOEM *against* POLLOCK and BROWNS.

IN an action of reduction of a bond of 500 merks, as being given *in lecto agritudinis, alleged*, Absolvitor, because it was given for a preceding cause, viz. for some victual sold to the granter thereof, the delivery whereof he offered to prove. *Replied, Agat eo nomine* for the victual, but the bond was null, and could not be obligatory; *next*, If it were sustained for that cause, yet not probable but by writ or oath of party, for otherwise the pursuer should be constituted debtor of 500 merks by witnesses. THE LORDS found the allegiance relevant to be proved by witnesses, being to fortify the bond; and because the victual was alleged delivered partly to the granter of the bond, partly to his father, to whom by the bond he granted himself to be heir, the LORDS sustained the probation only for such as was delivered to himself, but not to his father, unless the defender would prove *alunde* than by the bond, that the granter thereof was heir to his father.

Fol. Dic. v. 2. p. 254. Spottiswood, (CONTRACTS, &c) p. 71.

* * Durie's report of this case is No 33. p. 3209, *vacc* DEATHBED.

No 473.

1636. July 7.

NICOLSON *against* BURNET.

A COMPRAISER having declared on death-bed, that the sum comprised for was paid, except L. 40, and desiring that his heirs and executors should seek no more, and the said declaration being offered to be proved by witnesses above all exception; the LORDS found it not relevant to be proved by witnesses.

Fol. Dic. v. 2. p. 256. Durie.

* * This case is No. 4. p. 5166. *vacc* GROUNDS and WARRANTS.

No 474.