

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.