

No 24. LORDS, in regard he prejudged none thereby but himself, and that his promise could not bind his wife, found this relevant to be proved by his oath.

*Fol. Dic. v. 2. p. 21. Spottiswood.*

\* \* \* This case is No 71. p. 8959. *voce* MINOR.

1665. June 30.

KENNEDY against AGNEW.

No 25.

The Lords refused to reduce a bond granted by a son, without the knowledge of his father, to his father-in-law, for diminution of the tocher, because the sum was small and the lesion inconsiderable.

ANDREW AGNEW, Younger of Lochnaw, granted a bond for L. 1000 to Thomas Hay of Park, his father-in-law, which being assigned to Thomas Kennedy of Kirkhill, he charges young Lochnaw; who suspends, and intents reduction, with concurrence of Sir Andrew Agnew, his father, upon this reason; that the said Andrew having married Park's daughter, Sir Andrew did provide his son and her to a competent provision, and the heirs of the marriage also, for which, in name of tocher, Park was obliged to pay Sir Andrew L. 10,000, this being a solemn contract of marriage, Park did most fraudulently, *contra bonos mores*, without the privacy or consent of Sir Andrew, procure this bond from his son-in-law, the time of the contract, there being nothing treated thereof betwixt the parents. It was *answered*, That the reason is noways relevant; because, Park having given a considerable tocher with his daughter, for which the provision was made by Sir Andrew to his son, it was lawful for Park to take a bond for so small a sum, being only the tenth of the tocher, and which was only payable after his wife's death, wherein no circumvention was used, nor enorm lesion to the granter.

THE LORDS, in respect of the meanness of the sum and small lesion, assoilzied.

*Fol. Dic. v. 2. p. 22. Gilmour, No 153. p. 109.*

\* \* \* Stair reports this case.

1665. July 27.—KENNEDY of Kirkhill, as assignee by Thomas Hay of Park, to a bond of L. 1000, granted by Andrew Agnew, Younger of Lochnaw, charges him thereupon, who suspends, and raises reduction on this reason, that the bond was granted at the time of his contract of marriage, clandestinely, without the knowledge of his father, who was contractor, *contra pacta dotalia*, et *contra bonos mores*. The defender *answered*, That he having given a very great tocher, *viz.* L. 10,000, above his estate, which is all paid to his good-son's father, he did declare, that he was not able to give so much, and thereupon he got this bond, not to have execution till after his death, which he might lawfully do, having given a tocher suitable to the condition of the receiver, and above the condition of the giver.

THE LORDS repelled the reason, in respect of the answer.  
This was thereafter stopped, to be further heard.

No 25.

*Stair, v. I. p. 302.*

1668. July 21.

PATON against PATON.

PATON, in his son's contract of marriage, dispones to him his estate, and the tocher was payable to the father. After the contract, and before the marriage, the father takes a bond of 2800 merks from his son. The wife and her brother pursue a reduction of this bond, as fraudulent, et contra bonos mores, et contra pacta dotalia. It was *alleged* for the father, That he might very lawfully take a bond from his son, for provision of his children after the contract, and before the marriage, having infest his son in his whole estate, which was worth 1000 merks yearly, and getting but 2500 merks of tocher, and having some debt, and many children. It was *answered*, That the estate was not worth 600 merks of rent, and the father's liferent of 400 merks reserved; so that the annualrent of this bond would exhaust the remainder, and they would have nothing to live upon.

THE LORDS having considered the contract and allegiances, thought that it was not sufficient to annul the bond, that it was after the contract, and before the marriage, if there was any reasonable cause; therefore, and before answer, ordained the comuners at the marriage to be examined, whether it was comuned and agreed, that the tocher should be accepted for satisfaction of the debt and bairns portions; and they having deponed *affirmative*,

THE LORDS reduced the bond, as contrary to the communing at the contract of marriage, the estate being very mean.

*Fol. Dic. v. 2. p. 21. Stair, v. I. p. 555.*

1680. January 23.

HOME against HOMES.

IN a contract of marriage, the wife having a power, in case of no heirs of the marriage, to make her tocher return to what person she should appoint; and she having named her husband, this nomination was sustained, though done after the contract, and before solemnization; because, this was not impinging upon the contract, but only exercising a faculty given by the contract.

*Fol. Dic. v. 2. p. 23. Stair.*

No 27.

\* \* \* This case is No 304. p. 6093. *voce* HUSBAND AND WIFE.