

No 72. rity, seeing he might, out of favour, secure his tenant, and grant him a discharge, which did not preclude him to reduce a bond granted by him in his minority to his hurt and lesion, unless he had done some direct deed in favours of the creditor.

Gosford, MS. No 818. p. 515.

No 73.

A bond of provision granted on death-bed, was found homologated by a factor, in the heir's minority, paying the annualrents, which were sustained by the heir as articles of discharge after majority.

1683. *January.* CRAWFORD *against* CRAWFORD.

ALEXANDER CRAWFORD of Keith having pursued a reduction of a bond of provision granted by the deceast Alexander Crawford, his father, to Marion Crawford his daughter, for 3000 merks, which being granted upon death-bed, the LORDS reduced the bond; but in respect one of the witnesses, who was the pursuer's factor, has deponed, that, during the time he was factor, and intromitted with the pursuer's estate, he made payment to the defender of the annualrents of the said bond, and that the pursuer, since his majority, had granted the factor a general discharge of all his intromissions, which the LORDS found did import an homologation of the bond; therefore, they granted him a diligence against the factor for exhibiting the discharge.

Fol. Dic. v. 1. p. 381. Sir P. Home, MS. v. 1. No 375.

1685. *February 13.* FALCONER *against* ———.

No 74.

Found in comity with Farquhar against Gordon, No 65. p. 5685.

ONE having raised revocation and reduction of a bond wherein he became cautioner in his minority;

It was *alleged* for the defender; That the pursuer had homologated, by pursuing and recovering a decret against the principal upon a separate bond of relief, narrating the bond in question.

Answered for the pursuer; The pursuit and decret upon a separate bond of relief, *ob majorem securitatem*, cannot infer homologation of the debt. *2do*, The decret upon the bond of relief was procured before the revocation, which therefore cannot be said to be passed from.

THE LORDS repelled the defender's allegiance, and qualification of homologation,

Fol. Dic. v. 1. p. 381. Huncarse, (MINOR.) No 714. p. 202.

1688. *July 13.* DEACON SOMERVILLE *against* EARL OF ANNANDALE.

No 75.

THE Earl of Annandale having objected minority against a bond granted by him for 15,000 merks, to Deacon Thomas Somerville, on which he was pursued by the creditor,

It was *alleged* for the pursuer; That the defender had, after he was major, wrote a letter to him, excusing the not-payment of the money due by him to the pursuer; which was a clear homologation of the bond.

Answered; The letter doth not mention the bond, but debt, and there is indeed debt due; for the bond is only questioned upon the exorbitancy of accounts for which it was granted; and homologation to take (away) the privilege of minority ought to be express.

Replied; The pursuer was not furnisher of these accounts, but paid them to Mr Lants after they were examined by my Lord and his chamberlain.

THE LORDS sustained the homologation, the pursuer deponing the whole accounts were paid without any abatement.

Fol. Dic. v. 3. p. 381. Harcarse, (HOMOLOGATION.) No 509. p. 142.

* * * Fountainhall reports the same case :

Thomas Somerville, taylor in Edinburgh, his pursuit against the Earl of Annandale, on a bond of 1500 merks, is reported by Forret.

ANNANDALE had a reduction of it on minority and lesion, as having curators, and they were not subscribers; which he only repeated to the effect to quarrel the exorbitant accounts, and prices of furnishing, of which the bonds were made up. *Answered, imo*, It was all for aliment, clothes, &c. and so *in rem versum. 2do*, It was homologated in majority, by letters acknowledging the debt and partial payments.—THE LORDS sustained the bond, but ordained Thomas to give his oath on the truth and reasonableness of the articles of his account.

Fountainhall, v. 1. p. 511.

1710. July 18.

ALEXANDER GIBSON of Durie *against* JOHN TROTTER of Mortonhall, and the Executors of GILBERT CLERK of Pitteuchar.

HELEN TROTTER, with consent of John Foulis apothecary, having granted to the deceast John Gibson of Durie, in *anno* 1669, a disposition of an old apprising of the Earl of Home's estate, wherein the granters excepted from the warrandice, a disposition made by him to Mr George Trotter of Chesterhall, of the lands appraised, in so far as concerned, or might be extended to 3000 merks; and also their disposition of these lands to the executors of Mr Gilbert Clerk of Pitteuchar, in so far as might be extended to 4000 merks;—in a reduction, improbation, and declarator, at the instance of Alexander Gibson now of Dury, as having right to the disposition in favours of John Gibson his predecessor, against John Trotter of Mortonhall, as representing Mr George Trotter, and the executors of Mr Gilbert Clerk, the LORDS found the defenders obliged to take a day to produce the dispositions excepted in the warrandice of that granted to the pursuer's author;—albeit it was *alleged* for the defenders, That their rights

No 75.

No 76.

Reduction of rights excepted out of warrandice sustained, altho' acknowledged *in græmio* of the pursuer's right.