

1665. June 21.

BRAIDY *against* LD FAIRNY.

A HOLOGRAPH bond proves not its date against an inhibitor.

No 498.

Fol. Dic. v. 2. p. 258. Stair. Gilmour.

*** This case is No 27. p. 12275.

1668. November 14.

MARGARET CALDERWOOD *against* JANET SCHAW.

No 499.

MARGARET CALDERWOOD pursues Janet Schaw to pay a bond, as heir to John Schaw, granted by him, who *alleged* absolvitor, because the bond is null, wanting witnesses. The pursuer offered him to prove holograph. The defender *answered*, That holograph could not prove its own date, so that it is presumed the bond was granted on death-bed, unless it be proved that the date is true as it stands, or at least that it was subscribed before the defunct's sickness. The pursuer *answered*, That holograph proves its date, except *contra tertium*, but it is good against the granter or his heir, who cannot be heard to say that his predecessor's deed is false in the date. The defender *answered*, That an heir might very well deny the date of a holograph writ, otherwise the whole benefit of the law (in favour of heirs not to be prejudged by deeds on death-bed) may be evacuated by antedated holograph writs on death-bed. The pursuer *answered*, That he was willing to sustain the reason founded on death-bed, which was only competent by reduction, and not by exception or reply. The defender *answered*, That where death-bed is instantly verified by presumption of law, and that the pursuer must make up a writ *in rigore juris* null for want of witnesses, he ought without multiplication of processes, both to prove the bond holograph, and of date anterior to the defunct's sickness.

Death-bed sustained by exception against a bond without witnesses, and alleged to be holograph.

Which the LORDS found relevant.

*Fol. Dic. v. 2. p. 258. Stair, v. 1. p. 562.**** Gosford's report of this case is No 71. p. 2737, *voce* COMPETENT.

*** A similar decision is reported by Stair, 24th June 1681, Dows *against* Dow, No 158. p. 11477, *voce* PRESUMPTION.

1672. January 20. BELL *against* FLEMING and WILLIAMSON.

No 500.

JOHN BELL having arrested all goods and sums belonging to Smith his debtor in the hands of Williamson and Fleming in Aberdeen, and pursuing for making forthcoming, they depone, that the time of the arrestment they had only in their hands some pieces of English cloth, a part whereof was impignorated to Williamson for payment of a sum conform to a ticket produced, and that Smith being debtor to them in several other sums, Williamson assigned his

Holograph bond does not prove its own date against an arrester.