

*ARBITRIUM BONI VIRI.*

1612. June 10. GAVIN HOME'S HEIRS *against* The LAIRD OF BLACADER.

THE LAIRD of Blacader having wadset the lands of Johnfeleugh to Gavin Home, under reversion of 2500 merks, and such sums as should be bestowed on building of houses, for ease and safety of the tenants, and their goods; with 15 years tack after the loosing, for L. 20 yearly: At the redemption, Gavin Home's Heirs craved 6000 merks for the expences of a house built by his father; which, by report of visitors and craftsmen appointed by the Lords, was declared to extend to 6000 merks. Blacader's visitors reported, that the byres built for safety of the tenants' goods, were only estimated to L. 140; and the rest of the buildings were not necessary nor conform to the reversion. — THE LORDS modified L. 1000 for the buildings.

*Fol. Dic. v. 1. p. 53. Haddington, MS. No 2459.*

No 1.

In a reversion it was provided, that whatever expences should be bestowed on building, should be refunded at the redemption. The building was disproportionate to the property. The Lords modified the expence accordingly.

1629. July 23. LADY BUCHANAN *against* The LAIRD.

IN AN ACTION, pursued by the Lady against her Husband, for modification of a yearly sum to her, for her aliment, during his remaining out of the country, founded upon a contract made by him in her favours, whereby he was obliged to pay such sums of money to her, as the persons appointed in the contract should modify; which persons being most part dead, and the survivor not resident in the country, the Lady desired the Lords, as becoming in their places, to modify the same to her, her husband being still out of the country, and she wanting maintenance. — THE LORDS sustained the action founded upon the said contract, albeit made betwixt the husband and the wife, and found it became in their hands, as in *arbitrio boni viri* to do the same; seeing the contract agreed with all law, both divine, natural, and human, and without any contract, ought to be allowed, that the husband should sustain his wife, according to the proportion and competency of his means; and therefore modified to her yearly, during his absence, 2000 merks.

Clerk, Hay.

*Fol. Dic. v. 1. p. 52. Dirie, p. 466.*

No 2.

A husband was bound to pay his wife, as aliment, such sums as certain friends should appoint. These friends were dead or absent. The Lords modified the amount, as in *arbitrio boni viri*.