

1623. March 14. DOUGLAS against ROBERTSON.

JOHN ROBERTSON and his wife gave a bond of 500 merks to one Douglas, son to the wife by her first husband, as his portion natural due to him by his father's decease and testament; whereupon Robertson being charged, suspended, *alleging*, That the bond bearing no cause but the natural portion due to the charger, could have no execution for any farther than the same; and that the sum contained in the bond, exceeding that sum of the testament, behoved to be diminished and reduced to the sum contained in the testament.—It was *excepted*, That the bond obliging the party to pay 500 merks, could not be moderated in respect of the testament, because it contained a confession by the executrix and her husband; notwithstanding whereof the LORDS found, That the sum contained in the bond should be moderated and reduced to the only cause therein mentioned, which was the sum owing to the charger by virtue of his father's testament.

*Fol. Dic. v. 1. p. 399. Haddington, MS. No 2812.*

No 182.

The sum in a bond by a wife, was reduced to what arose from the generous cause mentioned in the narrative.

1667. June 18. HOME against The COUNTESS OF MURRAY.

JAMES HOME of Beaprie having assigned to the Countess of Murray the gift of escheat of Sir John Kininmonth, and certain debts due by the said Sir John, the Lady, by her bond, granted that she had got the said right, and obliged herself either to make payment to the said James of the foresaid sums, or to repon him to his own place. The Lady being pursued upon the said bond, *alleged* that it was null, being granted by her during her marriage, without her husband's consent.—It was *answered*, That the desire of the summons was alternative, either to pay or repon the pursuer, *et deceptis non decipientibus succuritur*.—THE LORDS having debated amongst themselves upon the reason of the law annulling deeds *stante matrimonio* done by wives; and some argued, that women married are not in the condition of pupils who have not *judicium*, nor minors who have not *judicium firmum*; and that they are liable *ex delicto vel quasi*, and *ex dolo*;—THE LORDS, before answer to the debate, whether her assertion in the bond, *viz.* that she had received the writs mentioned in the same, should be obligatory, at least so far as to repon the pursuer, they ordained her to be examined anent the cause of granting the bond.

No 183.

A Lady, assignee to a gift of escheat, granted bond for a sum or alternative to repon the donatar. Although the obligation was granted without her husband's consent, it was not found null.

Clerk, Gibbon.

*Dirleton, No 84. p. 35.*