

1669. July 10. GARDINER against COLVIL.

No 178.

A father having purchased lands to an infant son, and having also taken infertment in the son's name, the father's creditor, who afterwards appraised these lands, was found to have no right. See Stair's report of this case, No 48. p. 1314.

IN a reduction of a comprising led at Colvil's instance, as assignee by Ronaldson, in and to a bond of L. 68 Sterling, whereupon the lands of Ladykirk were comprised; which reduction was pursued at the instance of Gardiner's wife and children, as being infert in the fee of the said lands before the comprising led against their father;—the assignation made to Colvil being produced, and bearing date *in anno* 1663, the pursuers offered to improve the same as being of a false date; and offered to prove, by the writer and witnesses, that it was truly dated *in anno* 1668. It was *alleged* for Colvil, That he had a true assignation dated *in anno* 1663, which being lost the time of the production, he did obtain this new assignation of the date of the former, and having since recovered the first assignation, he needed not make use of this last, but would take up the same. THE LORDS would not suffer him to take up the assignation, in respect it was judicially produced, and an act made thereupon. But, before they would sustain the improbation, they ordained the defender to declare, under his hand, upon what terms he would abide at the verity thereof, for the writing over of any writ and inserting the first date, not being done *animo decipiendi*, nor prejudging any party, will not amount to the crime of falsehood.

In the same process, the children's infertment was not sustained to reduce the defender's right, who was a creditor, albeit it was *alleged*, that it was both prior and depended upon a contract of marriage, in respect that the father was only obliged by contract of marriage to provide the fee of his conquest to the children, and the infertment given them was only base, the father retaining the possession during his lifetime; which the LORDS found could not hinder creditors to contract with him, and to comprise for their just debt.

Fol. Dic. v. 2. p. 148. Gosford, MS. p. 65.

*** Stair's report of this case is No 48. p. 1314., *voce* BASE INFERTMENT.

1671. February 18.

AGNES DUNDAS against The LAIRD of ARDROSS and the LAIRD of TOUCH.

No 179.

A mother having lent her son's money, and taken a bond in his name, it was found to be the son's evident,

THE Laird of Ardross having granted bond to umquhile Mr Henry Mauld and his spouse, and their heirs, of 8000 merks, and, after his decease, granted a bond to the relict, bearing to have borrowed 2000 merks from her, and obliging him to pay the same to her in liferent, for her liferent use only, and, after her decease, to William Mauld, her son, and his heirs; and another bond, bearing him to have received from the relict 1000 merks, in name of Henry