

and freedom of the Countess to employ her own servants, or his freedom and liberty to continue in her service.

It was ANSWERED,—That he, having voluntarily granted this bond, and being conscious to himself that he had formerly made advantage of the Countess's weakness to go about her own affairs, and having the sole trust, did make a great fortune to himself; it was lawful to the charger to take such a bond for his mother's good and the children's.

The Lords did sustain the bond as valid and lawful; and found, That, *eo ipso*, that he voluntarily granted such a bond, he made himself suspect, and did acknowledge his guiltiness; and so decerned him to leave off to serve in that manner he had formerly done.

Page 215.

1672. *January 3.* The COUNTESS of BRAMFORD and LADY FORRESTER *against* The LAIRDS of CARSE and HOPTOUN.

THE Countess of Bramford, having insisted against Hoptoun, as representing his father, to make payment of the sum of 11,000 merks, as a part of the money due by the Earl of Errol, and his cautioners, to the Earl of Forth, *super hoc medio*, That he had granted a bond of warrandice to the Earl of Errol's cautioners and friends, bearing a receipt of the money from the general commissary, and that new surety was given in his name for the said sum from the Earl of Errol's friends; which accordingly was paid to him; which, by the act of restitution against the forefaulture, declaring intromitters liable, did furnish action against Hoptoun and his heirs to refund the same.

It was ALLEGED for Hoptoun, That it was clear, by the bond and the discharge therein contained, that the receipt of money from the general commissary was granted by Hoptoun's nephew, Sir Thomas Hope of Carss's son, and his mother, who was his tutor; and that the new surety, taken in the name of Hoptoun, was only in trust and for security of his bond of warrandice granted to Errol's cautioners; and, therefore, he neither having intromitted for his own use, nor having taken new bond for his own relief and security,—(but the reason of his giving bond was, because Errol's cautioners could not be satisfied by any bond from a minor or his mother,)—he could not be liable by the act of restitution declaring all intromitters to be liable.

The Lords found, That Hoptoun, having taken a new security in his own name, and that the Earl of Kinnoul's cautioners had paid the same, that he was liable to the pursuer; unless he would allege and instruct, that as he was intrusted for Carse, so the money was truly received by him and his tutor; and that he had such a discharge from them as would bind the intromission upon Carss.

Page 223.

1672. *January 4.* ROXBURGH *against* BEATTIE.

IN the action before mentioned, betwixt the said parties, Beattie, as having