

1676. July 18. COCKBURN *against* The VISCOUNT of OXENFOORD.

No 159.

A young Nobleman, immediately on becoming major, granted bonds to the person who had travelled with him abroad during his minority. He brought a reduction, alleging, that the narrative of "Sums advanced," and "Services done," was false. Found irrelevant.

MR JOHN COCKBURN having charged the Viscount of Oxenfoord for payment of a bond of 10,000 merks, he suspends on this reason, That the bond was procured from him shortly after his minority, by circumvention of the charger, who seduced him to go abroad after he was married, against his friends will, and who by act of Council was prohibited to converse with the suspender upon that account. And whereas the bond bears, 'particular sums advanced to the Viscount,' the narrative is false, for it is known that the charger was in straits himself at that time, and complained that he had not bread; and he can give no evident to instruct that he had, or did employ such sums for the Viscount. *2do*, The suspender hath a reduction depending upon this bond, and another bond of L. 3000, and a pension of 1000 merks yearly, bearing 'to be for the charger's faithful service,' which is false, and he hath done him great disservice. *3tio*, The charger was the Viscount's governor abroad for several years when he was but 16 years of age, during which time there are bills drawn and answered to the Viscount for L. 8000 Sterling, which behoved to be put in the hands of the charger, in respect of that age the Viscount was then in, and for which he hath made no account.—It was *answered* for the charger, That none of the grounds alleged are relevant, for the bonds being granted by the Viscount when he was major, it imports nothing whatever the narratives thereof were, for it is a certain rule in law, *falsa narrativa non nocent*, seeing without any cause the simple obligation was sufficient; and therefore dispositions, gifts, bonds, pensions have never been annulled upon the failing of the narrative, nor upon wanting of a cause, albeit in writs there is *causa præstanda*; if that fail, the right may fail therewith, as *causa data non secuta*, but where the narrative is not *de causa præstanda sed præstita*, it improveth nothing; neither will all the grounds adduced infer circumvention of a person that was major; likeas, these writs were granted after majority, and the act of Council taken off at the Viscount's desire; and as for the pension, though the charger needs allege nothing, whether there was just cause or not, yet it is known the charger spent all his youth attending the Viscount, when he might have applied himself to another calling. As for the account, there is nothing to instruct the charger's receiving of the Viscount's money; and though there were, it being given out in daily expenses when the Viscount was abroad, it could have no other instruction but the charger's own oath for clearing what he received, and that he debursed the same for the Viscount's use.

THE LORDS repelled all the reasons foresaid, except the account, as to which they appointed an auditor to clear the same, before whom the manner of instructing charge and discharge was to be debated.