

1685. *March.* HARY GRÆME *against* DOUGLASSES.

MR DOUGLAS having, after he was condemned to die for murder, acknowledged, in exoneration of his conscience, by a declaration under his hand ratified before the justices, that he had raised fire in Hary Græme's chamber; Hary raised a process of damage against his heirs.

Alleged for the defenders, *1mo*, The defunct was minor, and lesed by that confession; *2do*, It was emitted without consent of his curators, and so null; *3tio*, The defunct, after sentence, and before execution, was reputed to be *in lecto ægritudinis*, so that he could not prejudice his heir by his confession.

Answered; Minors cannot revoke confessions of crimes, unless they can *docere de errore*; *2do*, As minors may commit crimes without consent of their curators, so they may confess them; *3tio*, The law of death-bed is founded upon the presumption, that persons *ex favore et impatientia morbi*, may be imposed upon to prejudge their heirs; but here the defunct was in firm and perfect judgment and health. Again, it were absurd if a person condemned for a private crime, acknowledging high treason, might not be indicted again for treason, and forfeited upon his confession. Now, *de facto*, the defunct was indicted again for the fire raising; and though he was acquitted by an assize, because he did not ratify the said confession before them, yet the declaration before witnesses is not sufficient to infer an obligation for damage; and if a party on death-bed should judicially acknowledge himself guilty of treason, he might be forfeited for the same after his death.

Replied; No heir can be directly prejudged by any writ of his predecessor made on death-bed.

THE LORDS found, That Mr Douglas, after sentence, was in the case of death-bed; and therefore did not sustain process on his confession.

Fol. Dic. v. 1. p. 220. Harcarse, (SUMMONS.) No 913. p. 257.

1724. *July 15.*

AGNES MAXWELL and EDWARD M'CULLOCH, her Assignee, *against* JAMES CORRIE, Provost of Dumfries, and Others.

EDWARD MAXWELL of Hill, by his contract of marriage anno 1718, 'came bound to settle his estate on the heirs of the marriage; which failing, it was provided to the heirs of his body, by any other marriage; which failing, to his sister Agnes and the heirs of her body; which failing, to Edward M'Culloch the pursuer, and his heirs;' with the burden of an annuity of 500 merks to his future spouse, in case she should survive him, and that there were children of the marriage, and of 800 merks if there were none. He also be-

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No 110.
Found as
in No 107.
p. 3328.

No 111.
The Lords found, that a person by a sale in the rational way of administration, might dispose of his woods even upon death-bed; and the sale being