

## SECT. VII.

FIDEI COMMISSA, whether they must be confirmed?

1745. February 12. THOMAS BOYES *against* JAMES DEWAR of Vogry.

JAMES DEWAR of Vogry granted bond to James Hog of Hagbrae, for £940 Sterling, under back-bond, That if he should lend £810 thereof to certain persons, their bonds should be accepted as payment for so much. Accordingly he lent the money to these persons, but upon bonds payable to himself; and Hagbrae being deceased, Thomas Boyes, writer in Edinburgh, was appointed by the Lords of Session factor on his effects, with a power to deliver up and discharge Vogry's bond. Vogry presented a bill, shewing that he was threatened to be charged on his bond, which he apprehended he was not safe to pay without confirmation; and therefore craving letters of suspension.

Answered for Mr Boyes, There was no need of confirming more than was due, and Vogry was only resting the surplus in his bond over the £810. With regard to the residue, he was to be considered as a trustee; and it did not require any confirmation to oblige him to denude of the bonds, which was all that could be asked of him.

The Lords passed the bill.

Lord Drummore, *Reporter.*

*Fol. Dic. v. 4. p. 270. D. Falconer, v. 1. p. 73.*

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The subject of a trust must be confirmed by the representative of the *Fidei commissarius*, before he can oblige the trustee to denude.

## SECT. VIII.

Confirmation necessary to establish a right to the Dead's Part in the nearest of Kin.—A Bond of Corroboration obtained by the nearest of Kin supersedes Confirmation.—Heir of a Marriage may without Service challenge Deeds contrary to the Contract of Marriage.

1745. January 23. CARMICHAEL *against* CARMICHAEL.

THE brother of a defunct having taken out an edict, in order to a confirmation, as executor *qua* nearest of kin, died after obtaining a decree-dative, but before the confirmation was expedite. A question arose between his children and the other

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