

tract of marriage containing the said provision of fee and conjunct-fee made by the father to his son and good-daughter, which contract was subscribed by the son, and who thereafter was infest with his wife in the said land, and thereby the husband had in effect passed from the prior infestment, subscribing the contract and accepting the posterior infestment conditioned in the contract. And so the case of the relict was thought more just and favourable, depending upon a contract of marriage, which ought not to be elided by any fraudulent deed done by the creditors *ex post facto*, after the said contract and infestment of the relict's.

*Act. Mowat. Alt. Stuart. Gibson, Clerk.*

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1626. *November 28.* THOMAS HOPE and THOMAS NICOLSON *against* JAMES NICOLSON.

MR Thomas Hope and Mr Thomas Nicolson having uplifted some sums of money pertaining to umquhile Mr Thomas Nicolson, which he had laid on land, and having paid the same to a creditor of the said Mr Thomas, they procured from that creditor an assignation, in their favours, of that bond made to the creditor, which they procured for their security, and warrandice of a renunciation made by Mr James Nicolson, son to the said umquhile Mr Thomas, of these sums, upon land, uplifted by them, as said is; in the which renunciation they were obliged to cause the said Mr James ratify the same at his majority:— When this assignation was so made by the creditor, the said Mr James, who should have returned the assignation with the principal bond, which was paid, and with the returning whereof he was intrusted,—ignorantly, being a minor, cancelled his father's name out of the bond, not knowing what of law was to be done: whereupon, he being convened for the said cancellation, at the instance of the said Mr Thomas Hope and Mr Thomas Nicolson, who are bound for him as cautioners foresaid, and who, for their relief, acquired the said assignation, to hear and see the premises verified, and therefore, that the said bond cancelled by him should make as great faith against him as when it was whole;— the Lords sustained this pursuit summarily, upon a supplication executed against him, but further process to be proven by his own oath; and by his oath found it proven against him, to infer the foresaid conclusion, seeing it was only craved against himself, and no other, albeit he was a minor. And though that it was doubted, if such a sentence upon his own confession, being minor, could be valid; but being *in facto suo et in quasi maleficio*, and only craved against himself, and he not opposing thereto, the Lords decerned; likeas, after the pronouncing of the sentence, the said Mr James compeared personally before the Lords, and by his great oath being sworn, made faith that he should never come against the sentence; whereupon the pursuers asked instruments, *partibus præsentibus*.

*Gibson, Clerk.*

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