

leged debtor, on his death-bed, at which time he could not burden the heir, who was now pursued, and which was instantly verified by the pursuer's own title produced; for it was subscribed by a notary for the alleged debtor, bearing to be so done, because of his great sickness, which rendered him unable to subscribe himself; likeas the charge produced by the pursuer, whereby he had charged the defender to enter heir to him is raised and executed within four days after the date of the bond: And the pursuer replying, that this nullity could not be received *hoc ordine, sed per viam reductionis*;—the Lords found that this was receivable, *via exceptionis*, without further process, being instantly verified by the pursuer's own writ. And it being also alleged, that the bond was null, being above 100 pounds, and subscribed only by one notary,—the Lords found the same null also for that cause; albeit the pursuer alleged, that it was a bond made by one who could write, but, in sickness, not being able to write, was supplied by a notary for him, and which was done on his death-bed, and so ought to have force. Which reply was rejected, seeing the bond was used as a writ made by form of obligation, and so ought to have the solemnities requisite; and was not used as a deed depending on the form or act of a testament, in which case it behoved to have been confirmed, and pursuit intended upon that ground; and so the obligation was found null.

*Act. Cheap. Alt. Craig. Hay, Clerk.*

*Page 521.*

1630. *June 24.*

KIER *against* LAMB.

A MINISTER, provided by the deprivation of the last incumbent, who was deprived for disconformity, having charged him who was deprived to remove from his manse and glebe,—and the other suspending,—the Lords found that he ought not to remove, while he were satisfied, by the entrant, of the expenses and charges wared by him upon the reparation of the manse; albeit the said expenses were neither liquid, nor proven that he had debursed any; and, albeit the charger alleged, that, upon that naked allegiance untried, he ought not to be deprived from the use of his manse, the want whereof was an impediment to the service of the cure of that kirk, where none could serve except they had the manse to remain in; so that the most that could be done to the suspender, was to pursue, by way of action therefore, where it would have its own trial. Which was repelled: And sicklike, it was found, that, before he removed, he should be repaid of the monies given to the relict of the deceased minister; for it was also competent to this minister to seek the same, being removed from the kirk, whereby he was civilly dead, as it might have been competent to his executors if he had died minister.

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

*Page 521.*