

1673. June 10. LUKE STIRLING *against* KATHRINE GRAY.

IN a suspension, raised by Kathrine Gray, who was charged upon a bond of an hundred and fifteen pounds, upon this reason,—That she was minor the time of the granting thereof, and a servant to the said Luke, as taverner, not being authorised, and being but a young maid :—

It was ANSWERED, That the charge could neither be suspended, nor the bond reduced, upon that reason ; for she being then intrusted, and taking upon her, as taverner, to vend the charger's wine and ale, and having employed that sum, for which the bond was given, for her own use, which she should have paid after count and reckoning, it was just to take this bond.

The Lords having considered this as a case of general concernment, found, that, unless [the suspender] could allege fraud or force, the letters could neither be suspended nor the bond reduced.

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1673. June 28. WOMBERLY, Englishman, *against* CHARLES and SIR MARK KERS.

WOMBERLY, having married the sister of Charles Kers, and having gotten bond from him for payment of four hundred pounds sterling, whereupon he did charge and serve inhibition, which was SUSPENDED, upon this reason :— That no letters of horning could be directed, until Womberly's son, begotten of the said marriage, should be provided thereto by an English security. But so it is, he never was provided, nor could, being dead before the subscribing of the bond ; and, therefore, it was urged for Sir Mark Kers, who had bought the lands from Charles, granter of the bond, that the inhibition, being served contrary to that condition of the bond, might fall, and found not to affect his lands.

It was ANSWERED for Womberly, That the condition of the bond being to secure his son in the sum of money contained in the bond, in case he were alive, and should attain to such an age, the condition was purified by the death of his son before he served inhibition, or raised any letters upon the bond ; which was lawful for him to do.

It was REPLIED, That albeit the son was dead, yet he ought to have pursued a declarator to hear and see it found that the condition was purified ; without which he was *in mala fide* to raise letters summarily, and serve inhibition.

The Lords did find no necessity to raise a declarator, but that the charger proving that the son was dead, he might lawfully raise letters of horning and inhibition, and execute the same, seeing the condition was only in favours of the son, and the bond was given as a part of the mother's portion and tocher ; but that cause being controverted, and it being alleged for Charles Kers, that the true and only cause for granting the bond was to make a provision for the son ; which was denied by Womberly.

The Lords, before answer, did ordain the comuners, and writer, and witnesses in the bond, to be examined.

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