

No 480.

volous subtilty of not registrating a writ after the granter's death. Again, though execution, or diligence of horning, pointing, or caption upon a writ so registered, might have been declared null; yet where nothing followed upon the registrating but what might have proceeded upon the principal contract itself, though it had never been marked registrated, by way of action, *non refert*, whether the registrating was before or after the granter's death. Again, the possession of James Waddel and his brethren was but clandestine, before the defenders adverted to their interest, who, since the other's removal, have possessed a matter of thirty years; *3tio*, Though, in a proving the tenor of this contract, in order to pursue thereon, it were reasonable to require a nice and mathematical instruction of the whole contents of the writ, and subscriptions, yet the adminicles and documents adduced by the defender are more than sufficient to exclude certification against it, being expedite *in anno* 1638, now seventy years ago; for albeit positive falsehood might be a ground to reduce a writ *quandocunque*, yet this old contract, upon which two decreets, infeftment and possession hath followed, cannot be taken away only by the presumptive falsehood of a certification.

THE LORDS found (there being no qualifications of falsehood insisted in) the adminicles proved, and relevant to exclude the certification.

*Forbes, p. 200.*

No 481.

Found, that a bond upon death-bed, bearing the cause to be for alimenting, excluded the defence of prescription.

1725. February 20.

Ross against MOUBRAY.

AGNES ROSS obtained from her son, Patrick Moubray, a bond for 5000 merks when he was on death-bed, which bore to be for the education and aliment she had given him for fifteen years.

After his death, she pursued Margaret Moubray for payment of the sum in the bond, as having past by Patrick and served heir to his predecessor in certain lands which Patrick had possessed for three years as apparent heir, by which she became liable for Patrick's debts and deeds in terms of the act 1695.

It was *alleged* for the defender, That the act 1695 did not concern gratuitous bonds, and this bond being granted on death-bed, could not prove its onerous cause, but must be presumed gratuitous.

*Answered* for the pursuer, That she was able to support the truth of the narrative of the bond by a proof of her alimenting and educating him, which undoubtedly was an onerous cause for granting it.

*Replied* for the defender, That a claim for aliment prescribed in three years, and could not be proved further back, and that three years aliment could be no adequate cause for such a bond.

*Duplied* for the pursuer; That a regular aliment does not fall under the triennial prescription, and is nowise similar to mens' ordinaries, merchants' ac-

counts, &c. *2dly*, Though it did fall under that short prescription, yet the currency of the furnishing would preserve it as it does merchant's accounts; and, *3tio*, The bond and acknowledgment under the defunct's hand was sufficient to exclude the defence of prescription.

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*30th June 1724.*—THE LORDS sustained the bond in so far as it was onerous; and, of this date, they found, That Patrick Moubray having on death-bed granted bond to his mother, bearing the cause to be for alimending, excludes the defence of prescription, they always proving alimending.

Reporter, *Lord Forglen.* Act. *Arch. Hamilton, jun.* Alt. *Ja. Boswell.* Clerk, *Justice.*  
*Fol. Dic. v. 2. p. 256. Edgar, p. 178.*

1734. *February.* CHRISTISONS *against* KER.

No 482.

A BILL granted upon death-bed found not to prove its onerous cause. See APPENDIX.

*Fol. Dic. v. 2. p. 255.*

## SECT. III.

In what cases a private Deed not probative betwixt the Granter and Receiver.

1622. *December 11.*

MR ALEXANDER CUMING *against* HENRY SEATON, and AITCHISON, his Wife.

THE LORDS sustained a voluntary interdiction made by a goodfather to his sons-in-law, to take away a personal bond made to a stranger; and when it was *alleged*, That it depended upon an anterior cause, viz. a bond of the like sum owing to the defender's husband, and which was confirmed in testament, to whom the defender was executor, and offered to prove, at the renewing of the last bond, the first was given back and destroyed;

THE LORDS would not sustain the said duply to be proved by witnesses, notwithstanding that they offered to prove the same by witnesses' oaths inserted, and not as subscribers of the said bond, except they would prove the same by writ or oath of party, specially in respect the bond made after interdiction bore borrowed money.

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The Lords would not admit evidence by the writer and witnesses of a bond, that the onerous cause was one not mentioned in the bond.

*Fol. Dic. v. 2. p. 25. Kerse, MS. fol. 62.*

\*\*\* Durie's report of this case is No 7. p. 7128, *voce* INTERDICTION.