

1668. November 14. CALDERWOOD *against* SHAW.

MARGARET CALDERWOOD being assigned to a bond granted by George Shaw, her deceased husband, for the sum of L. 220, did thereupon pursue Janet Shaw, as heir served and retoured to the said George, for payment thereof; which bond was holograph; and it being *alleged*, That holograph bonds do not prove against the heir *quoad datam*, and are null *ipso jure*, being presumed to be done upon death-bed; this allegiance was sustained, unless the pursuer would offer to prove that the bond was subscribed by the defunct before his sickness whereof he died; and that, notwithstanding it was *replied*, That holograph bonds are valid against the heir of the granter as well as against himself, and that it can only be objected by a third person that they do not prove *quoad datam*; and notwithstanding it was likewise *replied*, That they could not be sustained by way of exception, but by intending reduction.

*Fol. Dic. v. 1. p. 175. Gosford, MS. p. 18.*

No 71.

In a pursuit against an heir for payment of a bond, death-bed was found competent by way of exception.

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S E C T. XVII.

Exhaustion of Executry;—Challenge on the Head of Inhibition,  
—how Proponable.

LORD BRUGHTON *against* AIKMAN.

AN executor confirmed, pursued for payment of soumes contracted for the husband, contained in a bond registered, she may except upon the exhausting of the goods and gear contained in the confirmed testament *et habens beneficium inventarii non tenetur ultra*; and although she have not decret of exoneration, the same may be proven by way of exception, by paying of particular sums whilk she paid upon decret recovered against her before ordinar judges.

*Fol. Dic. v. 1. p. 175. Colvil, MS. p. 3.*

No 72.

Found that exhausting may be proponed for an executor by way of exception, altho' he have no decret of exoneration.

1639. January 24.

INGLIS *against* BELL.

MARGARET INGLIS, relict of umquhile Alexander Douglas macer, pursues Patrick Bell, provost of Glasgow, as executor confirmed to James Inglis, who was the pursuer's debtor, for payment of the sums addebted to her by the said

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No 73.

A party sued an executor, who had intromitted be.