ought to be more effectual than a deed in writing; for if it were, persons on deathbed might easily prejudge their heirs.

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THE LORDS inclined to find the reason relevant in these terms, viz. That Sir John the time of litiscontestation was sick of the disease whereof he died; and that it was not enough to allege he was sick, or on deathbed, at the taking of the term, or the time of the circumduction; because litiscontestation is contractus judicialis, where parties are compearing, and one upon deathbed may satisfy prior obligations; but, before answer, a joint probation was allowed, as to the state of the defunct's health the time of litiscontestation.

Fol. Dic. v. 2. p. 256. Harcarse, (Lectus Ægritudinis.) No 650 p. 179.

1687. November 22. CRAWFURD against Bell.

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The case of Crawfurd in Lithgow against Bell, was reported by Carse. A father on deathbed calls his son, and declares that the right of such a comprising standing in his name is but a trust, and takes his promise to denude of it to the true party; accordingly the boy afterwards gives them a bond, but being minor he is induced to revoke it. Alleged, He cannot revoke it, being charged by his father, ad levamen et exonerationem conscientiæ, to do it. Answered, What his father did in lecto does not tie him, being heir. The Lords, from a principle of conscience, allowed a trial by witnesses, or otherwise, if the father was heard, at any time in his health, to acknowledge that right to be only a trust; but did not sustain his declaration in lecto.

Fol. Dic. v. 2. p. 255. Fountainhall, v. 1. p. 481...

*** Sir P. Home reports this case:

James Bell having granted a bond to Euphane and Christian Crawford, making mention that Walter Buchanan of Drumakill having granted a bond to Mr Andrew Kerr for the sum of 1000 merks, and that Mr Andrew had granted an assignation of the same to Isobel Main, the said Euphane and Christian's mother, which being blank in the name, they filled in Alexander Bell, their nephew, his name, in the same; upon which there being an apprising led of Drumakill's estate, and infeftment past in the said Alexander's name; and that the said Alexander Bell, upon death-bed, did declare to the said James Bell, his son, that this assignation was only in trust to the said Euphane and Christian Crawfords, and required his son to denude himself of the trust in their favours; and being willing to perform his father's commands, and having got up the charter of sasine, that past upon the apprisings, in order to serve heir in special, therefore he is obliged to serve himself heir, and then to demand the apprising, in the pursuer's favours, and to deliver back the charter and sasine;

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and James being deceased, the said Euphane and Christian Crawfords pursues Mr Patrick Bell, his brother, as representing him, upon the passive titles, to fulfill the bond. Alleged for the defender, That the bond was null, as being granted by his brother when he was minor, without consent of his curators; and that no respect ought to be had to the narrative of the bond, because eadem facilitate, that he was induced to grant the bond, he might be persuaded to make what narrative the pursuers pleased; and it is denied, that the father did emit. any such declaration, and being nude emissio verborum, is not probable by witnesses. And albeit the said James, his father, had granted such declaration in writ, that the assignation was in trust, yet being upon death-bed, it could not prejudge his heir; and upon these grounds the defend r had raised reduction. which he repeated. Answered, That the bond being granted by the said James. for denuding of a trust, it was valid, albeit without consent of his curators, seeing he would have been obliged to have denuded himself of the trust, albeit he had not granted the bond; and the narrative of the bond is confirmed by his father's declaration, which is probable by witnesses, in order to the clearing of a trust; and albeit the declaration had been emitted upon death-bed, yet it was sufficient to prove the trust was decided, the in the cause of Mr Alexander , against the Children of Walter Reid; and the grounds and warrants of the apprisings were formerly kept by the said Isobel Main, and were still in the pursuer's hands; and it is clear. by the assignation, that it was blank when the said Alexander's name was filled up therein; and it is offered to be proved, by the leader of the apprising. and those that were employed for managing of the affair, that the same was led upon Isobel Main's expenses, and that the bond and assignation, and whole grounds of the apprisings, were delivered by her, or some other in her name. to the writer, who was clerk to the apprising, in order to the leading thereof; and after the apprising was led, the charter and sasine were passed thereupon, upon the said Isobel's expenses.

THE LORDS, before answer, allowed the pursuers to adduce probation upon these qualifications, viz. that Bell, the defunct, was heard declare, in his liege poustie, that he was trusted by the pursuer, in manner libelled; and upon whose expenses the apprising was led, and the infefement, charter and sasine, or the apprising was expede, and in whose custody the grounds of the apprising and infeftment are kept.

Sir P. Home, MS. v. 3.