

No 652. that Sir Arthur died shortly thereafter, *anno* 1642; and Cranstoun died *anno* 1645; and Whittinghame's successors were strangers to the business; and the missives adduced were not proved holograph, and were suspected.

THE LORDS found the defence, founded upon the foresaid adminicles, relevant and proved, and therefore assoilzied.

*Fol. Dic. v. 2. p. 272. Stair, v. 1. p. 273.*

1666. *January 12.*

EXECUTORS OF WILLIAM STEVENSON *against* JAMES CRAWFORD.

No 653.

Found presumed from several circumstances against the executors of a defunct, that a sum contained in the testament had been held by the deceased for behoof of another.

THE executors of William Stevenson having confirmed a sum of 3000 and odd pounds due by bond by John Ker to the said William, and also by James Crawford, who, by his missive, became obliged to pay what bargain of victual should be made between the said John Ker, and John Stevenson for himself, and as factor for William Stevenson; subsume, that this bond was granted for a bargain of victual. It was *answered*, That, albeit this bond had been in the name of William Stevenson, yet it was to the behoof of John Stevenson his brother, who having pursued upon the same ground the defender was assoilzied; and that it was to John's behoof, *alleged*, *imo*, That John wrote a letter to his brother William, to deliver up his bond, acknowledging that it was satisfied; and that John having pursued himself, for the other bond granted in place of this, the said umquhile William Stevenson compeared, or a procurator for him, before the commissaries, and did not pretend any interest of his own; neither did William, during his life, which was ten years thereafter, ever move question of this bond, nor put he it in the inventory of his testament, though that he put most considerable sums therein. It was *answered*, *imo*, That the presumptions alleged infer not that this bond was to John Stevenson's behoof; because, by James Crawford's letter, there is mention made of several bargains of victual, both with John and William; so that the bond, and pursuit at John's instance, might be for one bargain, and at Williams for another, especially seeing the sums differ; *2do*, Writ cannot be taken away by any such presumptions. It was *answered*, That if the defender, James Crawford, had subscribed this bond, it could more hardly have been taken away by presumptions, but he hath not subscribed the bond, but only his missive letter, which is dubious, whether it be accessory to this bond, or if that bond was for this bargain; and therefore such a writ may well be elided by such strong presumptions.

THE LORDS found the presumption relevant, and that they instructed the bond was to John's behoof, and therefore, in respect of the absolvitor at Crawford's instance, they assoilzied.

*Fol. Dic. v. 2. p. 271. Stair, v. 1. p. 337.*

\* \* \* Newbyth reports this case :

IN a pursuit at the instance of Stevenson and Watt, executors-creditors to umquhile William Stevenson, against James Crawford, the LORDS, in respect of a number of presumptions alleged for the defender, that the bond pursued upon was satisfied and paid, assoilzied the defender from the pursuit, and ordained the bond to be given up and cancelled.

*Newbyth, MS. p. 48.*

No 653.

1673. *January 22.*

WATSON against BRUCE.

IN a reduction, by a relict, of an assignation made by her to her brother-in-law, on this ground, That it was for the behoof of her husband, and the defender his brother's name borrowed, because the husband could not consent in favour of himself, and so revocable as *donatio inter virum et uxorem*; the LORDS, *ex officio*, having taken the defender's oath, he deponed, That he got the assignation, sent him from his brother some years before his death, in security of a L. 1000 due to him by his brother. The circumstances inferring the trust were, *imo*, That the assignation was *omnium bonorum*, without reservation of liferent or aliment, granted at a time when the pursuer was in imminent danger of death; and it was extremely improbable she would have made such right in favour of stranger; *2do*, The husband did uplift of his wife's effects, after the assignation, above 20,000 merks, and the defender was a subscribing witness to many of the discharges, without once offering to interpose; *3tio*, The defender did not allege he got the assignation from the pursuer, or from any person empowered by her to make delivery, and so it was never a truly delivered evident. The defender *answered*, He forbore to make use of his assignation, because, his brother having no children, he expected to be his heir, and was unwilling to cross him. THE LORDS found the evidences of trust relevant and proved, and found the assignation revocable, unless the defender should instruct he was creditor to his brother at the date of the assignation.

*Fol. Dic. v. 2. p. 271. Stair.*

\* \* \* This case is No 344p. 6129. *voce* HUSBAND AND WIFE.

No 654.  
A trust inferred from circumstances.

1678. *February 5.* CLELAND against M'DONALD, M'NEIL and Others.

A COMPETITION between a donatar and an arrester, and a declarator that though the bond was in John Cameron's name, yet the debt was truly Donald Cameron's, and the kine and the price his. THE LORDS finding John's name filled up in

No 655.