

THE LORDS decerned the tenant to make payment of the sum contained in the blank bond ; but declared, that if the tenant condescended on the date and witnesses in the bond, the executors should find caution to warrant him, if he were distressed upon any bond of the same date, sum and witnesses ; or if the tenant could not so condescend, THE LORDS superseded extract, as to that sum, till the first day of July, that the tenant might, by exhibition or declarator, secure himself against the blank bond.

Stair, v. 2. p. 588.

No 13

1680. June 3.

BUCHANAN against NAIRN.

WILLIAM BUCHANNAN having charged Robert Nairn, upon his bond of 220 merks : He suspends on this reason, That the bond was blank in the creditors name *ab initio*, delivered to the charger's uncle, among whose writs it was blank at his death ; and that his uncle's wife was in use to lift his rents and sums, and so was *præposita negotiis* ; all which was offered to be proven by the charger's oath of knowledge, and by the wife's oath, that payment was made to her of this sum. It was *answered*, That prepositure of a wife could not be inferred by use of receiving of sums without a warrant in writ, albeit such use might infer prepositure in the wife of a vintner, or shop-keeper, where writ uses not to be adhibited, which could never be extended to receiving payment of bonds by gentlemen's wives. *2do*, Though a commission were in writ, the wife's oath after the husband's death could not prove.

THE LORDS found the prepositure in this case could not be proven without a commission in writ, and that the wife's oath could not prove her receiving of the money after her husband's death ; but found, that if it were proven to have been blank by the defunct at his death, it was *in bonis defuncti*, and so behoved to be confirmed before extracting. See HUSBAND and WIFE.

Fol. Dic. v. 1. p. 103. Stair, v. 2. p. 768.

No 14.
Found, that a blank bond lying by the creditor at his death, must be confirmed as in *bonis defuncti*, no person having right to insert a name in it.

1695. January 25.

COLIN M'KENZIE against JOHN SUTHERLAND.

PHILIPHAUGH reported Mr Colin Mackenzie, son to Plufcarden, *contra* John Sutherland, son to Lord Duffus. Major Mackenzie being at Lord Duffus's house, he subscribes a disposition of his whole means and estate ; but it is confessed to have been blank when he signed ; and some days after falls sick of a fever and dies. His brother Colin claiming his estate, the Lord Duffus produces that disposition now filled up in the name of his son John ; whereof Colin raises a reduction, offering to prove it was blank when signed, and put up by him, in presence of the writer and witnesses, in his letter-case in his pocket, so that Duffus must prove it was filled up with his son's name, who was a boy of six years old.

No 15.
A disposition signed blank, in the name of the donee, and filled up after the granter's death, was reduced.