

satisfaction of 1000 merks, and £40 due to Pittarro, by Mr. Roger Mowat, and lifted from him by umquhile Alexander Keith, by Pittarro's warrant, for which he obtained decret against Alexander Keith's executrix before the Commissaries, now produced in process, and proceeding upon a missive letter of umquhile Alexander Keith's, acknowledging the debt. It was answered for Pittarro, that by the bond produced, it was clear that his name was in the bond *ab initio*, as creditor, and was not filled up *ex post facto*, neither was there any wrong in filling up this sum, because he having already proved, that Alexander Keith had uplifted the like sum of his from Mr. Roger Mowat, and that my Lord Kinghorn being debtor to Keith in considerable sums of money, paid to his creditors, conform to discharges produced in process, Alexander Keith might lawfully have filled up the sum in the bond, for repayment of Pittarro, whose money he had uplifted, and any friend of his had done my Lord Kinghorn no wrong, seeing thereby he would be exonerated of the like sum to Keith, and was content yet to count and reckon with Kinghorn, for Alexander Keith, and to restrict his sum to what shall be found due by the umquhile Earl of Kinghorn to Keith. Likeas, this Alexander Keith by his oath in process depones, that he heard that umquhile Alexander Keith, on his death-bed declare, that Kinghorn was debtor to him in 9,000 merks; and therefore he thought it no fault to fill up the blank in this bond. It was answered for Kinghorn, that albeit umquhile Alexander Keith was entrusted by the umquhile Earl of Kinghorn with this blank bond, that trust being merely personal to him, it was a most unwarrantable trinkating for any other after his death, to fill up the bond, especially seeing neither by testament, nor any other writ, umquhile Alexander Keith, who only was entrusted, and who lived many years after, and was no ways surpris'd with death, did signify that the money was borrowed from Pittarro, or taken from any of his creditors and applied to Kinghorn's use, and the hearsay of this Alexander Keith is of no moment; and if any thing be due by Kinghorn to Keith, the pursuer represents his father as heir, and shall answer Pittarro, or any executor or creditor of Keith's, whenever he shall be pursued; but cannot be insisted against, upon this bond, so unwarrantably filled up.

The Lords found the declarator relevant and proved, and therefore decerned the said bond null, reserving action against Kinghorn, upon any debt due by Kinghorn to Keith as accords.

*Stair, v. 1. p. 667.*

1675. July 27.

GAW against The EARL of WEEMS.

Janet Gaw having charged the Earl of Weems for payment of a sum of 2800 merks, contained in a bond granted by the late Earl of Weems and this Earl, to her husband and her, the Earl proponed a defence of improbation; which being heard by the Lords, they did declare the bond to be no authentic probative writ

No. 165.

Effect of a latent deed, never acted upon during the lives of the writer and witnesses.

No. 165. on these evidences, that it bears “ to be granted *in anno* 1632, without annual-rent, and that nothing followed thereupon till now, that the writer and all the witnesses insert are dead ; and that by comparison with a contract of the same date, and betwixt the same parties, the same writer and witnesses, it is evident that the hand-writing of the body, and all the subscriptions, are palpably different, and that the subscriptions of the parties and witnesses in this bond do clearly appear to be one hand-writing ;” so that it appears this hath been a copy.

And yet the Lords, for clearing the matter before answer, took the Earl of Weems’ oath, who denied the subscription, or the granting of this bond ; but the Lords considering that this bond was made use of by the pursuer, having found it amongst her husband’s writs, though she abode by that, yet it should import no criminal effect against her.

*Stair, v. 2. p. 362.*

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No. 166. 1709. *July 14.* VALLANCE *against* M'DOWALL.

The Lords refused to find a writ null, upon this ground, that it mentioned not the place where it was granted.

*Forbes.*

\* \* This case is No. 54. p. 5850. *voce* HUSBAND AND WIFE.

\* \* The same found in the case of Ogilvie against Baillie, mentioned below.

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No. 167. 1711. *February 21.* OGILVIE *against* BAILLIE.

A declaration sustained, though wanting a date:

*Forbes.*

\* \* This case is No. 123. p. 16896.

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No. 168. 1712. *February 5.*  
MARGARET, ELIZABETH, ANN, and ISOBEL ELIESES, Daughters to the deceased  
Mr. James Elies of Stenhouse-mill, *against* JAMES WATSON of Saughton, and  
His CURATORS.

Holograph,  
receipts need  
not witnesses  
to prove their  
dates.

In the count and reckoning at the instance of the daughters of the deceased Mr. James Elies, against James Watson of Saughtoun, as representing his father, men-