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ted with Keith's papers, who delivered the same to Pittarro: It being *alleged* for the defender, That Keith by his missive, which was produced, granting him to be debtor to the defender in greater sums, he was *in bona fide* to receive the bond from Keith, who had power to fill up the same as he pleased: THE LORDS, before answer, ordained Pittarro to be examined upon oath anent the manner and time how that bond came in his hands; and those that meddled with Keith's papers to produce all writs they had, that it might be known that Keith was truly debtor to Pittarro.

*Gosford, MS. p. 46.*

1670. February 3.

In a declarator at Kinghorn's instance, against the Laird of Pittarro, to hear and see a bond of 1000 merks, granted by Kinghorn's father to Pittarro, found null and void, upon this reason, that the bond was subscribed, blank in the sum, and delivered to Alexander Keith, who was agent for the Earl, and remained blank during both the said Earl's lifetime and Alexander's, and was then filled up in the sum by Keith's relict, or her brother, who delivered the same to Pittarro; whereupon Pittarro being examined upon oath, and one Alexander Keith, who was a friend of the deceased Alexander, and who knew that conveyance: THE LORDS did sustain the declarator, and decerned the bond to be void and null; notwithstanding it was *alleged*, that the bond being now in Pittarro's possession, and delivered to him for as much money due to him by Keith, for which he got a decret extending to this sum, it was lawful to fill up the same, it being intrusted blank by the Earl of Kinghorn; and that it ought to be presumed that the Earl of Kinghorn was debtor in as much, there being an account produced condescending on the particulars; only they reserved action, at their instance, against Kinghorn for any debt that they could make appear due by his father to Keith.

*Fol. Dic. v. 1. p. 103. Gosford, MS. p. 100.*

1678. January 4.

PEEBLES against The TENANTS of ROSSIE.

No 13.

An executor found to have right to the sum in a bond, granted blank to a defunct; but bound to find caution against distress, upon any bond similar in the date, witnesses, &c.

— PEEBLES being confirmed executor to the Laird and Lady Rossie, pursues the tenants for payment of the duties resting before the defunct's decease, and for certain bonds granted by the tenants to the defunct; the tenants having deponed, one of them acknowledges a bond granted to the defunct, wherein the creditor's name was blank. The question occurred to the Lords, whether that tenant should be obliged to pay the sums according to his blank bond; the difficulty on the one part being, that the tenant might be distressed for double payment, at the instance of any party whose name should be filled up in the bond; and if such bonds should not be effectual for executors or arrefters, it were easy to disappoint their diligence by taking blank bonds.

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.*

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.*

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,

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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.

No 15.

A disposition signed blank, in the name of the donee, and filled up after the granter's death, was reduced.