

* * * 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.

No 655. it, refused to admit either the granter of the bond, or any extrinsic witnesses, to depone in prejudice thereof; but found the allegiance that it was Donald's money only probable by John's oath, but ordained him to be examined in presence of the granter of the bond, or any other persons that Donald should desire him to be confronted with.

Fol. Dic. v. 2. p. 272. Fountainhall, MS.

No 656. 1681. December 1. WHITELAW against MALLOCH.

ONE Gray, a trustee for Trench, having served inhibition against some tenements, which tenements Trench acquired upon some other debt, and disposed to Mr Isaac Whitelaw; and Trench thereafter got Gray to assign the bonds and inhibition to William Mitchel, Trench's brother-in-law; who, after Trench's decease, transferred them to Malloch, who married Trench's relict and William's sister; and (Malloch) having raised reduction of the rights of the tenements *ex capite inhibitionis*, Whitelaw *alleged*, That the said bonds and inhibition, were in Gray's name in trust for Trench before the disposition, and were so conveyed without any onerous cause, *ut supra*.

THE LORDS, *ex officio*, ordained Gray and Mitchel, and others, to be examined as to the trust and conveyance, and if the bonds were lying by Trench the time of his decease.

Harcarse, (PROBATION.) No 781. p. 221.

. Fountainhall reports this case :

1681. February 23.—MR ISAAC WHITELAW's reduction against Robert Malloch being reported, " the LORDS found no necessity of Mr Isaac's calling the authors, because the adjudication craved to be reduced is led by Malloch himself, and not by his authors."

1681. November 30.—MR ISAAC WHITELAW's reduction and declarator against Robert Malloch being reported, the LORDS found the persons condescended upon ought to be examined upon the trust and conveyance, though it redounded to the prejudice of Malloch a singular successor, who might be innocent and *noways particeps fraudis*, else the fraud could never be got discovered.—This was so decided *multum refragante Domino Haddo pæside et aliis quibusdam*.

1682. January 5.—IN Whitelaw's case against Malloch (30th November 1681,) the LORDS declared that they would supersede to take Alexander Gray's oath till the conclusion of the cause, and at the advising they would consider on the necessity thereof, but ordained the rest of the persons condescended on to be examined.