

No 658.

accounts, otherwise there was more than sufficient time for Watson to have got his backbond renewed, which he never did during all that space. *Answered*, The case is indeed extraordinary, and therefore needs an extraordinary remedy, for what could make William Forrester write that memorandum on the back of the paper, if it had not been the express meaning and communing of the parties, and whether subscribed or not should bind him, even as minutes of partial payments set down in accounts-books, though unsubscribed; and by L. 21. § 1. *Cod De testamentis*, and the authentic there subjoined, a schedule written by a father, dividing his inheritance amongst his children, or gifting it to pious uses, is probative though destitute of the usual solemnities required by law. THE LORDS considered this was after the 25th act 1696, declaring that trusts thereafter should be only proved by subscribed writ, or oath, and therefore found the said unsubscribed scroll not probative of the trust, but prejudice to the pursuer to extinguish his bond by proving that William Forrester has got payment by the debts assigned to him.

Fol. Dic. v. 2. p. 272. Fountainhall, v. 2. p. 470.

1710. February 8.

JOHN M'LAREN of Craigfield, and JAMES DIN, *against* The EXECUTORS and CREDITORS of MAJOR CHIESLY.

No 659.

A person had been in use to draw bills in favour of his servant. One of these in the custody of the servant at his death, was, on account of the circumstances, found to be for behoof of his master.

MAJOR CHIESLY having been in use to borrow money out of the bank, by drawing bills upon his debtors, in the ordinary stile of bank bills, payable to Robert Currie his domestic servant, whose name was only borrowed *ad hunc effectum*, that Currie might indorse them to the treasurer of the bank, for value to the Major; one of these bills drawn upon Sir Alexander Brand, (which in respect of his refusal to accept, could not be transacted in the bank, where no unaccepted bills are negociated,) being neglected by the Major as an useless paper in the hands of Currie, who died shortly thereafter, his Representatives got hold of it, and brushed it up as a true debt upon the Major's Representatives, in a multiplepointing at their instance, against the Major's creditors.

Alleged for the Major's Representatives, No respect can be had to the bill, because Currie was the Major's servant at the date of it, and in constant use to uplift his money, and never indorsed the bill to any person in his lifetime; but on the contrary, when he made a disposition to his father of all his effects, made no mention of such a bill, though the particulars specified were of far less value; besides, it is ordinary in negociating bills in the bank, that the person to whom the money is payable in the bank, has no manner of interest in the bill, nor concern in the bank.

Answered, Currie being creditor in the bill, albeit he was the drawer's servant, a trust in his person can only be proved *scripto vel juramento*, conform to the act of Parliament 1696.

THE LORDS sustained the objection against the bill, and found, That it must be understood to have been drawn for the Major's own behoof, and that this case doth not fall under the act of Parliament 1696, anent trusts, and that Currie's Representatives had no more right to the bill, than they could have had to so much of the Major's money that had been found in Currie's hand.

Fol. Dic. v. 2. p. 272. Forbes, p. 395.

No 659.

1731. December. LORD STRATHNAVER against M'BEATH.

TRUST, in moveables, falls not under the act 1696, and is therefore relevant to be proved by witnesses. See APPENDIX.

No 660.

Fol. Dic. v. 2. p. 272.

1748. July 30. RAMSAY against CORPORATION OF BUTCHERS IN PERTH.

In the year 1728, Nathaniel Ramsay butcher in Perth, granted a disposition of all his moveables in general, to Jean Stalker his wife, bearing to be with the burden of his debts, leaving a tenement in Perth, which he had purchased from Graham of Redford, by a minute of sale, but whereof the price, being 1100 merks, was not yet paid, to descend to Mary Ramsay, his daughter, and only child.

No 661.
Trust implied from circumstances. Effect of payment made in consequence of a general disposition of moveables.

Jean Stalker, the relict, after having introrritted *per universitatem*, with her husband's moveables, acquired, in her own name, two adjudications, affecting the said tenement, one of which stood in the person of John Graham, son to Redford, who concurred with the Representatives of William Caddel, in whose person the other stood, in the disposition to her, which proceeded upon the narrative of the minute of sale, and of her having paid the 1100 merks to the representatives of William Caddel.

Jean Stalker, after the death of her daughter, sold this tenement to the Corporation of Butchers, against whom Euphan Ramsay, the sister and heir of Nathaniel, brought a reduction, in which she prevailed on this ground, That the purchase of the adjudications, by Jean Stalker the relict, appeared from its proceeding on the narrative of the minute of sale, to have been a trust for her daughter, and therefore the right in the corporation was *a non habente*; notwithstanding it was argued, that, by the act of Parliament 1696, trust could not otherwise be proved than by oath of party, or writ expressly acknowledging it; in respect of the answer, that the act is not to be so understood, but that trust may be inferred from writs importing a trust, though there be no express declaration of trust.

It was then insisted, That as, upon a fair count and reckoning, it would appear that the moveables disposed by Nathaniel Ramsay to Jean Stalker were