

the value of 100*l.* sterling, which were not comprised in the former settlement, and to which the appellant had no other right: and, besides, Sir John, the father, had a personal estate of 20,000*l.* sterling, which he might have disposed of at his pleasure, as he soon afterwards did to the appellant, the prospect whereof was a further inducement to the appellant to join in this entail, and to settle the succession as his father desired.

After hearing counsel, *It is ordered and adjudged that the petition and appeal be dismissed, and that the said interlocutors therein complained of be affirmed.* Judgment, 10 March 1717-18.

For Appellant, *David Dalrymple. Rob. Raymond. Will. Hamilton.*

For Respondents, *Tho. Lutwyche. Sam. Mead.*

This case seems to be inaccurately reported in the Dictionary, vol. 2. p. 431. *voce* Tailzie.

Sir Peter Frazer of Doors, - - - *Appellant*; Case 47.
 Isabel Sandilands, Widow of William Black
 Esq; - - - - - *Respondent.*

12th Jan. 1718-19.

Presumption — A person being sued in 1714 by the widow of one to whom, in 1697, he had granted a bond of pension for the consideration of managing the grantor's law affairs; though never demanded by the grantee during his life, the bond is supported and the money decerned for.

Holograph. — Whether holograph or not being referred to the oath of the grantor of a bond, the term is circumduced against him for not deponing.

Costs. — 40*l.* costs given against the appellant.

IN July 1697 the appellant granted a bond of pension to the late Mr. Black, advocate, the respondent's husband, of 10*l.* sterling per annum, to be paid at Whitsunday and Martinmas by equal portions, with interest after the respective terms of payment. The bond mentioned the consideration to be for Mr. Black's pains and management of the appellant's law affairs, and that it was to continue so long as the appellant had any law affairs. In July 1713, Mr. Black assigned the said bond to the respondent in trust for his children.

In 1715 the respondent, after her husband's death, brought an action against the appellant before the Court of Session for payment of the said bond and interest; stating that Mr. Black did, from the time of the date thereof till his death in August 1713, carefully manage all the appellant's law suits and other his affairs, but that neither the said pension, nor any part thereof, had been paid to him: and that the respondent, after her husband's decease, applied several times by herself and friends for payment of
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the money due upon the said bond, but the appellant always declined payment. The appellant contended that the bond was null, the writer and witnesses not being mentioned and described therein. The respondent answered, that the bond being holograph of the appellant, the designation of the writer and witnesses was not necessary; and insisted that the appellant should be obliged to confess or deny whether it was holograph or not. On the 27th of June 1716, the Lord Ordinary “sustained process upon
“ the bond libelled, on the respondent’s proving the same holo-
“ graph; and ordained the appellant to confess or deny the fact
“ against the 15th day of July then next, under the certification
“ contained in the act of federunt.” No appearance having been made for the appellant, the Lord Ordinary, on the 18th of July 1716, “Held him as confessed, and decerned in terms of
“ the libel.”

The appellant afterwards presented a representation, stating, that he had been abroad several years, and had not had any law affairs, and that Mr. Black had been paid several sums of money on account of the appellant’s law suits, which ought to be deducted from the said bond, and that the same never having been demanded, was to be presumed to have been paid. The respondent answered, that if Mr. Black had meant to re-call the bond he should have given notice to the respondent’s husband, that he might have been at liberty to take other business: and that in 1713 her husband had gone on the appellant’s request to his house, 100 miles from Edinburgh, to settle some of his affairs, and that no presumption of payment could lie to a bond of this nature. The Lord Ordinary, on the 25th of July 1716, “Adhered to the
“ former interlocutor, but sustained the foresaid defence of pay-
“ ment as relevant to be proved *scripto* of the said deceased Mr.
“ Wm. Black, or payment to the respondent since Mr. Black her
“ husband’s death relevant to be proved *scripto vel juramento* of
“ her the respondent *cum onere expensarum* in case the appel-
“ lant succumb, and assigned the 6th of November next for prov-
“ ing in the terms above mentioned.” The appellant reclaimed, but on the 31st of July, their lordships “Adhered to the former
interlocutors, and refused the desire of the appellant’s petition.” And on the 16th of November 1716 the Court “Circumduced
“ the term against the appellant for not proving payment, and
“ decerned and ordained the appellant to make payment and sa-
“ tisfaction to the respondent of the said sum of 10*l.* of yearly pen-
“ sion from the 12th of July 1697 to the term of Lammas 1713,
“ and of the interest of each moiety of the said pension from the
“ term of payment thereof to the term of Lammas 1713,
“ which being accumulated into one total sum was declared to
“ amount to 282*l.* 2*s.* 6*d.* Scots, and in like manner to make
“ payment and satisfaction of the interest of the said pension
“ from the aforesaid term of Lammas 1713, in time to come,
“ during the not payment thereof.”

Execution being sued out upon this decree, the appellant brought a bill of suspension; and, after discussing the same, the
Court,

Court, on the 12th of July 1717, "Refused the bill, and adhered to their former interlocutor."

The appeal was brought from "a decree of the Lords of Session of the 16th of November 1716, and an interlocutor of the 12th of July 1717, and several other interlocutors." Entered
23 Dec.
1717.

After hearing counsel, *It is ordered and adjudged, that the petition and appeal be dismissed, and that the decrees and interlocutors therein complained of be affirmed; and it is further ordered, that the appellant do pay or cause to be paid to the respondent the sum of 40*l.* for her costs in respect of the said appeal.* Judgment,
12 Jan.
1719.

For Appellant, Abel Ketelbey. Geo. Leshe.
For Respondent, Rob. Raymond. Will. Hamilton.

James Blackwood, of London, Merchant, *Appellant*; Case 48.
Forbes,
17 July,
1713.
John Hamilton of Grange, - - - *Respondent.*

26th Jan. 1718-19.

Tenor.—The Court of Session having reduced a decree of proving the tenor of a bond, and an adjudication and decree of mails and duties following thereupon, for the reason that it was not proved who were the writer and witnesses: the judgment is, from the circumstances of the case, reversed, the reasons of reduction repelled, and the adjudication sustained.

Damage and Interest.—The Court, in an interlocutor prior to those appealed from, having sustained the adjudication for the principal sum and interest, without all accumulation, penalties, and expences whatsoever, this latter part of their judgment is reversed.

IN 1679, Robert Blackwood, late merchant in Edinburgh, the appellant's father, deceased, brought an action before the Court of Session, against Alexander Hamilton of Grange, the respondent's uncle, then a minor, for payment of a bond, stated to have been granted by John Hamilton of Grange, deceased, the father of said Alexander, and Jane his wife, in the following manner: that John Hamilton and Jane his wife being indebted to the said Robert Blackwood in 1719*l.* Scots, they on the 24th of March 1674, granted him a promissory note for payment thereof; but the note not being paid when it fell due, the said John and Jane, on the 7th of September 1674, instead thereof, granted a bond to the said Robert Blackwood, whereby they obliged themselves, their heirs, &c. to pay 1000*l.* Scots, part of the said debt, at Candlemas then next, and 719*l.*, the residue thereof, at Whitsunday thereafter, with interest of the said principal sum from the date thereof, and a penalty of 300*l.* Scots in case of non-payment. And the said action also contained a conclusion against the minor for payment of a debt of 228*l.* 2*s.* 7*d.* Scots, stated to have been incurred by his father and mother after the date of the said bond. In this action the said Robert Blackwood obtained a decree of constitution in absence against the