

1662. February 13. JAMES MAXWELL *against* ADAM MAXWELL.

No. 3.

A ticket or obligation to grant a back-bond found to be sufficient evidence of a trust.

James Maxwell pursues Adam Maxwell for declaring a disposition of lands, granted by the said James' wife to the said Adam, to have been in trust to her behoof, and, after her decease, to her husband; and for adminicle libelled a bond granted by the said Adam, some months after the disposition, whereby he obliged himself to grant a back-bond to the lady, by the advice of lawyers, conform to the disposition made to him, and obliged him to deliver the said back-bond to the lady, or to the lady's husband after her death; whereupon it was alleged, that the back-bond being to be made by the advice of both their lawyers, the disposition behoved to be in trust. The defender opposed the ticket, bearing the back-bond to be conform to the disposition, in which there was an express reservation of the lady's liferent; so that the back-bond could import no more than securing of that liferent. The pursuer answered, These words, "conform to the disposition," were set upon the margin of the ticket, which was all written by the defender's hand, and might have been added *ex post facto*; 2do, The ticket behoved to import more than the liferent, because the liferent was fully and clearly reserved, and oft-times repeated in that disposition, so that clause had been frustrated; 3tio, The obligation to deliver the back-bond to the lady's husband, after her death, could not be understood to be only in relation to her liferent, which and the husband's interest should cease by her death.

The Lords found the ticket sufficient to instruct trust; but because the terms of the trust were not clear, they, before answer, in relation to the probation of the terms thereof, ordained the parties to count and reckon upon all sums due by the lady to the defender, in contemplation of the trust, that the same might be allowed and satisfied to the defender, before he be denuded.

*Stair, v. 1. p. 199.*

1663. February 19. CICIL RUTHVEN *against* HAY of Balhousie.

No. 4.

Cicil Ruthven having granted a bond to David Lamb, that thereupon he might apprise from her an annualrent, whereunto she was apparent heir, whereupon she having obtained a decree, and now seeking adjudication in Lamb's name, Lamb produces under his hand a writ, declaring that his name was but used in trust, that he disclaimed the process.

The Lords, notwithstanding, sustained process, being so far proceeded, in respect of the declaration bearing the trust, and found he could not disclaim, in prejudice of the trust.

*Stair, v. 1. p. 184.*