

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.

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

No 660.

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.

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

No 661.

Trust implied from circumstances. Effect of payment made in consequence of a general disposition of moveables.

No 661.

exhausted by other debts paid by her, she at least remained creditor in the 1100 merks paid for the adjudications; and that she, and those deriving right from her, had right to retain the subject in security thereof.

But the LORDS found, "that she had no claim for repetition of the 1100 merks or any part thereof."

A general disposition, even when with the burden of debts, has always been thought sufficient to defend against the universal passive title; and therefore, if she had not acquired the disposition, she could not have been subjected to the payment of the price, upon her instructing that the moveables with which she had intromitted were exhausted by payment of other debts; but as she had acquired the disposition and paid the price, and as her intromission had been *per universitatem*, without inventory, the LORDS found her not entitled to repetition.

Kilkerran, (TRUST.) No 4. p. 582.

1765. December 11.

ELIZABETH GILMOUR, Relict of the deceased Mr James Justice of Justice-hall,
against The Honourable JOHN ARBUTHNOT.

No 662.

Parole evidence competent to prove that a conveyance of a real right was in trust.

MR JAMES JUSTICE, in 1747, granted a bond to Mr James Arbuthnot, merchant in Edinburgh, for L. 100 Sterling; and, as a farther or collateral security, for the sum in the bond, Mr Justice conveyed to Mr Arbuthnot an adjudication against the estate of Stanhope for L. 1000 Scots principal, and considerable bygone annualrents.

Some time after this transaction, Mr Justice's affairs being in disorder, he named certain trustees, who took the management of his subjects; and, from these trustees, Mr Arbuthnot received payment of his debt of L. 100, contained in Mr Justice's bond.

Mr James Arbuthnot having died without reconveying the adjudication, on the estate of Stanhope, to Mr Justice, an action was raised by Mr Justice against Robert Arbuthnot, the heir of James, concluding that the right which stood in Mr Arbuthnot's person to that debt, should be reduced; and that Robert, as heir to James, should be obliged to denude thereof in favours of Mr Justice, the debt, for security of which it was conveyed, being *aliunde* satisfied and paid.

Before any judgment was given in this action, both Mr Justice and Mr Robert Arbuthnot died. But Elizabeth Gilmour, the widow and executrix of Mr Justice, having wakened the process, and transferred the same against the Honourable John Arbuthnot, the heir of Robert and James Arbuthnots, the Lord Ordinary, before whom the action came, allowed a proof, before answer, of all facts and circumstances for supporting the libel, and afterwards pronounced this interlocutor: "The Lord Ordinary having advised this process, proof aduced by the pursuer, and writs produced, finds it proved, that the conveyance