

T R U S T.

1639. *March 8.* STIRLING *against* CUNNINGHAM.

COLONEL CUNNINGHAM being obliged to pay £.200 to Andrew Stirling, brother to Captain Stirling, to the use and behoof of the said Captain, upon the registered bond he arrests in Mr. James Aikenhead's hands certain goods pertaining to the Colonel, and pursues to make the same forthcoming; and the Colonel compearing, and alleging, that the said Andrew Stirling, by his missive letters, written to the Colonel, declared that he should not seek payment of that sum while the Colonel pleased, in respect of several particulars betwixt the Colonel and the Captain, which were not ended; the Lords repelled the allegiance, and found, that the letters written by the Captain's brother, to whom the payment was ordained to be made by the bond, could not prejudice the Captain himself, the bond bearing, "that it was made to the behoof of the Captain," and so known to the debtor to be the Captain's proper money; and the letters not being written by him, but by his brother, (who was only an interposed person to the Captain's behoof), and without his warrant, albeit the payment was appointed to be made to his brother, *ut supra*, yet the Captain could not be prejudged by that letter.

Durie, p. 380.

1662. *January 3.* INNES of TIPPERTIE *against* His CREDITORS.

Innes of Tippertie being charged by several of his creditors, suspends, and alleged payment made by the suspender's son to them. The chargers answered, *Non relevat*, because they declare the charge to be to that son's behoof who paid them, so that they must allege it was paid by his means. The suspender replied, That seeing they declared it to be to the son's behoof, the payment was sufficient, because he offered him to prove, by a transaction, the son was obliged to pay his debts. The chargers answered, (denying any transaction), if it were proved, the suspender behoved to instruct his part of it performed.

The Lords found the reasons and reply relevant, reserving the said allegiance against the transaction, when produced.

Stair, v. 1. p. 74.

No. 1.

A person bound by bond to one, bearing to be for behoof of another, cannot defend against payment upon a promise or letter of forbearance from the trustee, without warrant from the principal creditor.

No. 2.