

No. 6. That much more was to be attributed to witnesses inserted, upon whose testimonies the parties condescend, and confide, than to common witnesses; *2do*, Albeit witnesses were not receivable to prove trust alone, yet where there are strong presumptions concurring, they are admittable even to annul writs of the greatest importance, as is ordinarily used in the indirect manner of improbations; and here are strong presumptions, viz. that the father, at the time of this bond, did dispoise to the defender, his eldest son, his whole estate, without a reservation of his own liferent, or any other thing, and there were five children beside, who had no provision; so that albeit this bond be conceived to the wife, her heirs and assignees, yet it cannot be presumed to be intended to have fallen back to the defender as her heir.

The Lords, in respect of the presumptions, were inclinable to admit the witnesses; but they ordained the pursuers, before answer to what could make a sufficient probation, to adduce such witnesses as they would make use of for astructing these presumptions and the trust.

Stair, v. 1. p. 418.

1667. July 14.

SCOT against SCOT.

No. 7.

A party assigned a bond, and took a back-bond, bearing that the assignation was in trust. It was decided, that the assignation had been granted for the sole purpose of doing diligence.

Stair.

* * This case is No. 8. p. 11344. *voce* PRESUMPTION.

No. 8.

A trust-disposition of land having been granted to prevent the rigour of creditors, the person entrusted was found to have no right, in consequence of assignations he had taken, to receive more of the debts compounded for than he had truly paid.

1667. November 15. JAMES MAXWEL against ADAM MAXWEL.

James Maxwel, and the umquhilè Lady Hiltoun, his spouse, having dispoised their land to Adam Maxwel, James now pursues a declarator of trust, whereupon the Lords formerly ordained count and reckoning, that it might appear what Adam had expended upon the account of the trust. In which account Adam gives up certain bonds by James, whereunto he had taken assignation, against which, he could allege no more than what he truly paid out, in respect the time of the assignation he was entrusted by the pursuer. The defender alleged, *Non relevat*, unless it were alleged he was entrusted to compose for the pursuer's debts; but if it was only a trust of his land, and not a general trust of all his affairs, it could not reach these bonds; and albeit, upon the account of friendship or charity, the defender might be desired to take no more than he gave, there lies no obligation, in law or equity, upon him so to do, but he may demand what the creditors, his cedents, or any other assignee, might demand. The pursuer answered, That