

No. 163. addition, but only the inserting of date and witnesses, that has been, because of the ordinary stile of bonds, whereof the date and witnesses are filled in by another hand, not being ordinary for these to write marginal additions; and as for the importance, or contrariety of the margin to the body, that is most ordinary, especially where the body is but a draught drawn by another hand, who has erred in his intention in the substitution. It was answered for the pursuer, that albeit the marginal addition should be proved to be holograph, yet unless it were proved to have been truly written, and subscribed at the date of the bond, it cannot prove that it is of the same date, or of any date before the defunct was on death-bed, and so it is null, and cannot prejudice the pursuer as heir, especially seeing the defunct having then no sons, might probably adject this in favours of his daughters, contrary to his former intention, which if it should take effect, would ruin the heir male.

The Lords having taken the deposition of the witnesses inserted, and both deponing that they did not remember whether the marginal addition was upon the bond when it was subscribed or no, and that it did appear by inspection, that the marginal addition was by another hand than that that wrote the body, and that it was not mentioned at the conclusion, where the defunct expressed, that he himself was filler up of the date and witnesses, and nothing was adduced to astruct that it was of a true date before his taking bed; upon all these considerations jointly, the Lords found that the marginal addition was not of the date of the bond, and that having no date of itself, it was not instructed to have been done before the defunct was on death-bed, and so was null as to the heir; but the Lords did not find that these allegiances severally could have derogated to the marginal addition, but only that all jointly were sufficient, the matter being also accorded amongst the parties.

Stair, v. 1. p. 453.

1670. February 3. EARL of KINGHORN *against* The LAIRD PITTARRO.

No. 164.
Effect of a
blank.

The Earl of Kinghorn pursues a declarator of the nullity of a bond of 1000 merks granted by his father, and now standing in the name of Pittarro, as creditor on this ground, that he never borrowed the sum from Pittarro, nor delivered this bond to him; but having trusted umquhile Alexander Keith, as his ordinary agent and writer, with this bond, blank in the sum and date, to have borrowed money upon the same, took never effect, but remained so blank in the hands of Alexander Keith, for many years, till his death, and thereafter in his relict's hands till her death, and after her death the blank was filled up, by John Bane her brother, and the date made *in anno* 1647, whereas the bond mentions Alber as cautioner, who died before the year 1640; whereupon Pittarro's oath, and the oath of Alexander Keith, friend to the said umquhile Alexander, being taken, Pittarro acknowledged that the bond was blank, and filled up by the said John Bane, as the reason bears, and that he received the same by advice of this Alexander Keith, in

satisfaction of 1000 merks, and £40 due to Pittarro, by Mr. Roger Mowat, and lifted from him by umquhile Alexander Keith, by Pittarro's warrant, for which he obtained decret against Alexander Keith's executrix before the Commissaries, now produced in process, and proceeding upon a missive letter of umquhile Alexander Keith's, acknowledging the debt. It was answered for Pittarro, that by the bond produced, it was clear that his name was in the bond *ab initio*, as creditor, and was not filled up *ex post facto*, neither was there any wrong in filling up this sum, because he having already proved, that Alexander Keith had uplifted the like sum of his from Mr. Roger Mowat, and that my Lord Kinghorn being debtor to Keith in considerable sums of money, paid to his creditors, conform to discharges produced in process, Alexander Keith might lawfully have filled up the sum in the bond, for repayment of Pittarro, whose money he had uplifted, and any friend of his had done my Lord Kinghorn no wrong, seeing thereby he would be exonerated of the like sum to Keith, and was content yet to count and reckon with Kinghorn, for Alexander Keith, and to restrict his sum to what shall be found due by the umquhile Earl of Kinghorn to Keith. Likeas, this Alexander Keith by his oath in process depones, that he heard that umquhile Alexander Keith, on his death-bed declare, that Kinghorn was debtor to him in 9,000 merks; and therefore he thought it no fault to fill up the blank in this bond. It was answered for Kinghorn, that albeit umquhile Alexander Keith was entrusted by the umquhile Earl of Kinghorn with this blank bond, that trust being merely personal to him, it was a most unwarrantable trinkating for any other after his death, to fill up the bond, especially seeing neither by testament, nor any other writ, umquhile Alexander Keith, who only was entrusted, and who lived many years after, and was no ways surpris'd with death, did signify that the money was borrowed from Pittarro, or taken from any of his creditors and applied to Kinghorn's use, and the hearsay of this Alexander Keith is of no moment; and if any thing be due by Kinghorn to Keith, the pursuer represents his father as heir, and shall answer Pittarro, or any executor or creditor of Keith's, whenever he shall be pursued; but cannot be insisted against, upon this bond, so unwarrantably filled up.

The Lords found the declarator relevant and proved, and therefore decerned the said bond null, reserving action against Kinghorn, upon any debt due by Kinghorn to Keith as accords.

Stair, v. 1. p. 667.

1675. July 27.

GAW against The EARL of WEEMS.

Janet Gaw having charged the Earl of Weems for payment of a sum of 2800 merks, contained in a bond granted by the late Earl of Weems and this Earl, to her husband and her, the Earl proponed a defence of improbation; which being heard by the Lords, they did declare the bond to be no authentic probative writ

No. 165.

Effect of a latent deed, never acted upon during the lives of the writer and witnesses.