

TRUST.

TWEEDIE *against* LOCH.

WILLIAM Loch, writer, purchased, at a judicial sale, the lands of Earlshaugh. Tweedie alleged, that he had given a mandate to Loch to purchase these lands for him; that he had accepted of the mandate, and therefore he ought to denude in Tweedie's favour. Mr Loch denied the trust, and objected the Act 1696, and that it was not competent to rear up this mandate or trust by witnesses. The Lords allowed a proof before answer; and, upon advising the proof, assolied Mr Loch, upon the insufficiency of the proof.

Another cause,
SKEEN *against* BALFOUR RAMSAY,
was precisely similar.

MAXWELL *against* MAXWELL.

MR Bruce gave a commission to Mrs Maxwell to purchase for him, at a sale, the lands of Leckie-Bank. She purchased them, and entered into a minute of sale in her own name.

Mr Maxwell, assignee of Bruce, brought an action against her to denude: she denied the trust. A proof was allowed, by which the trust having been proved, her heirs (for she died during the dependance,) were decerned to denude, and found liable in expenses.

1771.

ALISON *against* ALISONS.

COLIN Alison, wright, embarrassed in his circumstances, put 40 guineas into the hands of his brother, Thomas Alison, glazier, to purchase for him a small tenement in Corri's Close: the rights were taken in Thomas's name, but no declaration of trust was given by Thomas. Thomas died. In an action at Colin's instance against Thomas's wife and daughter for establishing the trust, and to denude, the Lord Elliock, Ordinary, 31st January 1771, found no sufficient evidence of the alleged trust. The Lords, on advising a petition and answers, found it not competent to prove the trust by witnesses, 21st June 1771. But, on a second bill and answers, they found the trust proven by certain facts and circumstances. The trustee was dead.

In this case, it was pleaded, *inter alia*, that the Act 1696 applies only to persons who have granted disposition *ex facie* absolute, without taking a back-bond or declaration of trust in writing. In this case, Colin granted no disposition to

Thomas: all he did, was to put money into Thomas's hands to purchase a tenement for him, which Thomas did; but, by concert between them, on account of Colin's creditors, took the rights in his own name. This was not the case under the statute.

1777. July 8. The EXECUTORS OF MRS MARY STEWART *against* M'ARTHUR STEWART of ASCOG.

It has been found, by several late decisions of the Court, that trusts may be inferred from circumstances, and this notwithstanding of the Act 1696. The decisions have not gone the length that a trust can be proved by parole evidence alone; but parole evidence will be received in part, and, joined to written evidence and documents, will make out a trust effectually. A case of this kind was decided between Mr M'Arthur Stewart of Ascog and the executors of Mrs Mary Stewart, sister of the late Blackbarony. For Chief Baron Montgomery, a creditor on the tailyied estate of Blackbarony, having received payment of his debt, he conveyed it to Mrs Stewart, and it stood in Mrs Stewart's person at the time of her death; but, from certain facts and circumstances, both from writing and parole evidence, it truly appeared to be vested in her person in trust for the late Blackbarony, who, it would appear, intended to keep it up as a debt due to his heir out of the tailyied estate of Blackbarony. And the Lord Gardenstone having, 6th February 1777, found "that there was sufficient legal evidence from the writs produced, the parole evidence, and other circumstances, that this was truly a trust in the person of the sister;" the Lords, this day, upon advising petition and answers, "adhered to the Ordinary's interlocutor, and refused the petition."

See Kilk., 30th July 1748, *Ramsay against Butchers of Perth*, under the title of "Trust implied from Circumstances." 11th December 1765, *Gilmor*; 13th June 1766, *Moodie against Auchterlony*; 1765, *Alison against Fairholme*.

TUTORS AND CURATORS.

1775. July 30. MATHIE *against* WATSON.

THE power of freeing curators from omissions and from being liable *in solidum* is competent to the father only: the minor cannot do it in any no-