

was tripled, That the fact became imprestable by his own deed, and therefore he cannot put the party truster to dispute the validity of their rights when he hath put the same away, as was found in the case of Janet Watson against Mr. Walter Bruce, No. 70. p. 3537. *voce* DILIGENCE.

No. 15.

The Lords found, that in so far as the Lord Northesk had received benefit, or might have received benefit by the said apprising as to this debt, and in so far as the entruster was damnified, which could be instructed and liquidated *instante* in this process, the Lords would sustain the same in compensation, and no further.

*Stair, v. 2. p. 300.*

1677. July 25. EARL OF WINTON *against* The MARQUIS OF DOUGLAS.

The Earl of Abercorn having disposed the lordship of Paisley to the Earl of Angus, he gave back-bond to employ the price of the lands for relief of himself and the Earl of Winton of their cautionry. The Earl of Angus having thereafter sold the lands to the Earl of Dundonald for £.160,000; Winton pursues the Marquis of Douglas as heir to his father the Earl of Angus, for relieving him from paying of £.8,000 for the Earl of Abercorn. There is produced a disposition to Dundonald, bearing £.50,000 received by Angus. and £.110,000 detained by Dundonald, to purge real incumbrances. The defender alleged that he could only be liable for £.50,000 received by his father, and that the remainder was employed for real incumbrances, as is expressed in the disposition, whereof the pursuer makes use as a probation for him, and therefore must admit of it as a probation against him. It was answered, That if the Earl of Angus had deponed in the terms of this disposition, his oath would have proved against him as to the receipt of £.50,000, but would not have proved for him, that he had allowed £.110,000 for real incumbrances, but it would have been rejected as an extrinsic quality, and he put to prove it; much more must this hold in his writ, otherwise if the disposition should acknowledge that all was detained for real incumbrances, that naked assertion of a party should have freed himself from counting.

The Lords found that the pursuer might make use of this disposition, for proving against the defender the price, and his father's intromission, and that the defender behoved to instruct the real incumbrances that were on the estate, and did grant diligence against Dundonald and others for proving the same.

*Stair, v. 2. p. 548.*

No. 16.

In what manner modification and restriction of a trust are to be proved?