

No. 1. Williamson, in a petition to the Court, pleaded,

That such lines as these had always been granted at the leadmines by the overseers for the different companies working there, and that it was universally understood, that these lines were no more than certificates or letters of credit, by which these companies denote, that the workmen to whom they were granted, had credit with them to that extent; on which credit, accordingly, the notes alone circulated, and that it never was understood any person but the Company, for whose behoof they were granted, and on whose credit alone they circulated, was liable for the payment of them. That the overseer who subscribes these notes, was never understood to be liable for their payment, because, as expressed in a certificate signed by eleven of the principal tacksmen and overseers of these works, 'the overseer is understood to sign them as the servant of the Company, and not for his own account, nor upon his own private credit.'

It was answered: That as Williamson had granted these notes without specifying he did so by procuration, he rendered himself liable for the payment of them: That so far from the notes being only current on the credit of the Company, the persons who composed that Company were not even known to the holders of these notes. Certainly the pursuer had no reason to think that Williamson was not bound, as he had adhibited his subscription to the note, which, even by the most simple and ignorant, is always understood as inferring an obligation upon the person so subscribing to pay the contents. And if it were established, that one person might draw a promissory-note in behalf of another, without necessarily interposing his own credit for the performance, or specifying that he acts by procuration, a wide door would be open to fraud, and uncertainty introduced in all mercantile transactions; but it has been always understood, that the rights of third parties can never depend upon the private situation or transactions of others, and therefore, notwithstanding that Williamson had only granted these notes in the usual manner as overseer, yet that he must be liable for payment of them when in the hands of a third party.

The Court, proceeding principally upon the universal practice at the Lead-hills, altered the interlocutor of the Lord Ordinary, who had affirmed the decision of the Sheriff, and found, that Williamson was not personally bound.

Lord Ordinary, *Cunington.*

Act. *Maconochie.*

Alt. *Alex. Murray.*

D. C.

1801. *January 22.*

ANNE INGRAM and Others, *against* MARY STEINSON and Others.

No. 2.
Objection to
a testament,
that the in-

WILLIAM ELLIS executed a testament, in which he appointed James Ross, James Steinson, and Mary Steinson his wife, his executors; and, among other

legacies, he bequeathed a clock, and £5 to buy mournings, to Ross; and £5 for the same purpose to Alexander Tillary, the writer of the deed. He left the residue of his fortune to his widow.

Ross and Tillary were the instrumentary witnesses.

Anne Ingram and others, the nearest of kin of William Ellis, brought a reduction of the deed, *inter alia*, on the ground that the instrumentary witnesses were legatees, and one of them an executor, contending that no person interested in a deed can be a witness in support of it; Ersk. B. 4. Tit. 2. § 27.

Answered: Trifling marks of respect shewn to instrumentary witnesses cannot affect the validity of a deed. Besides, as they merely attest the grantor's subscription, the usual objections, whether of interest or of propinquity, do not apply to them; *D. Lib. 28. T. 1. L. 20.* 8th March 1685, Grahame against Marquis of Montrose, No. 115. p. 16887; 28d November 1708, Sym and Scot against Donaldson, No. 119. p. 16891; Falconer against Arbuthnot, No. 24. p. 16817; 19th December 1786, Scott against Caverhill, No. 204. p. 16779. At all events, the objection could reach only the validity of the legacies and nomination of Ross as executor, but could not affect the interest of third parties.

The Lord Ordinary repelled the reasons of reduction.

The Lords, upon advising a petition with answers, unanimously adhered.

Lord Ordinary, *Mulloch*.
Clark, *Messiers*.

For the Pursuer, *Lumsden*.

Adv. *Williamson*.

D. D.

Fac. Coll. No. 211. p. 482.

1801. February 6. JAMES MERRY and Attorney, against JOHN HOWIE.

In 1777, John Howie executed two separate dispositions, by which he conveyed one-half of the lands of Malside to John Howie, his nephew, but who was not his heir-at-law; and the other half to James Merry, a distant relation by affinity. The disponent reserved the liferent of the whole to himself, and to Mary Smith his wife.

The disposition in favour of James Merry, was deposited by Mary Smith in the hands of David Cochrane.

On the 6th January 1785, John Howie senior executed a new settlement, by which, without formally revoking the two former dispositions, he conveyed the whole lands of Malside, after his own and his wife's death, in favour of John Howie, the former disponent of one half of them.

John Howie senior died on the 8th January 1785, two days after the execution of this deed.

No. 2.

Instrumentary witnesses were legatees for small sums, and that one of them was also one of the executors named in it; repelled.

No. 3.

A disposition *mortis causa* reduced on account of a vitiation in its date,