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gainst him of ante-dating, which justly lies against deeds granted in Scotland; where the grantee is supposed to have the law of death-bed in his eye. Promissory notes stand upon the same footing with bills of exchange by the law of England, which it is admitted are probative of their date, and is a good ground of action against the heir in Scotland; and sure it will not be maintained that there is a greater suspicion of ante-dating promissory notes, than bills; nay, if the pursuer had foreseen this objection, or intended a fraud against the heir, it was easy for him to take bills instead of promissory notes, which must have avoided all suspicion.

And, with respect to the argument, That the *comitas* is never carried so far to impair the effect of a prohibitory law; it was answered, The pursuer had no occasion to differ with the defender upon this point, because the observation does not apply to the present case; seeing there is no law which declares, that the same suspicion which lies against a deed executed in Scotland, must lie against one executed in another country, where the law of death-bed obtains not. See the statute 3d and 4th Annæ; Cook's Institutes, lib. 3. § 337.; Voet, *ad pandectas de statutis*, § 13.; and the case David Kinloch *contra* the Heirs of Dr Fullarton, No 22. p. 4456.

THE LORDS repelled the objections against the notes, and found them probative: But, upon a reclaiming petition and answers, the LORDS found the notes in question do not prove their date, in prejudice of the heir, so as to affect the heritage.

*C. Home, No 221. p. 363.*

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A person lodged goods in the ware-house of a foreign factor, which belonged to a third party. The factor advanced cash to the person who lodged the goods, supposing them to be his property. By the custom of that country, the factor had a right of retention till payment. He was found accordingly, in an action here, entitled

1746. December 11. MITCHELL *against* BURNET and MOUAT.

SKINNER and Simpson of London having commission from Mitchel of Aberdeen to send certain East India goods to Campvere, whence they were to be re-landed in Scotland, they took the occasion of Sinclair of Aberdeen's having, when at London, purchased from them a quantity of the like goods in the like view; and without distinguishing between the bales which were Mitchel's, and those that were Sinclair's, the bill of loading was taken for the whole in the name of Sinclair, deliverable to him or his assignees, who, upon his arrival at Campvere, lodged the whole in the ware-house.

Sinclair having re-shipped the bales that belonged to himself for Scotland, but, on an occasion unnecessary to be mentioned, left those that were Mitchel's without acquainting Burnet and Mouat, in whose ware-house the goods were, that they were another man's property, and in the *interim* his-circumstances becoming suspected, Burnet and Mouat, to whom he was debtor in above L. 200 of a former debt, and L. 57 at this very time advanced to him, refused, when required by Mitchel, to deliver up the said goods; till they were paid off what Sinclair owed them.

And arrestments having been also used in Burnet and Mouat's hands by other creditors of Sinclair, in a multiplepointing by Burnet and Mouat, they *pleaded imo*, From certain circumstances, that the property of the goods was in Sinclair; *2do*, That they had been by him impignorated to them for security of what he owed them.

But the circumstances by them alleged, not appearing sufficient to instruct either, the LORD ORDINARY ' Found it instructed, that the goods in question were the property of Mitchel, and found the impignoration neither proved nor relevant to incumber Mitchel's property.'

Upon advising petition and answers, it appeared to be the opinion of the Court, that the interlocutor had gone too far in finding the impignoration not relevant, at least so far as concerned the L. 57 then advanced to Sinclair upon the credit of the goods; for, that however at common law a man's property can only be affected by his own deed, and that the presumption of property from possession *cedit veritati*, yet the expediency of trade and commerce requires, that wherever any person is vested in the nominal property by a bill of loading, third parties contracting with him as proprietor, whether by sale or pledge, should be safe: But as there was no proof of such impignoration, there was no occasion to give judgment upon this point.

Mean time, a new allegiance being made for Burnet and Mouat, that, by the custom of Holland, where a factor gives credit to any person possessed of goods, and lodged by him in the factor's custody, the factor can detain those goods so lodged in his ware-house till he is paid, if, when the credit was given, the factor believed the goods to be really the possessor's, although it should afterwards appear that the property of the goods belonged to a third party; the LORDS ' Remitted to the Ordinary to enquire, Whether or not, by the practice of merchants in Holland, a person coming from foreign parts possessed of a parcel of goods, and having a bill of loading in his name, and lodging those goods in a factor's ware-house, which were intended to be carried to another market, and the factor giving credit in goods or money to the person possessed of these goods in the belief of the goods being really his, the factor can detain the goods so lodged in his ware-house until he is paid off the goods or money so given credit for, though it should appear after the consigner has left the country, that the goods lodged in the factor's ware-house were the property of a third party, and that there is no evidence that the factor got any right to, or explicit pledge of these goods from the consigner; with power to determine or report.'

And the ORDINARY having taken the oaths of four of the most noted merchants of Edinburgh, who deposed the practice of Holland to be such as described in the remit, he found ' the defenders had right to detain the goods lodged in their hands by Sinclair, until they were paid off the said sum of L. 57 advanced to Sinclair, and annualrents thereof.'

The pursuer acquiesced as to the principal, but reclaimed as to the annualrents; but the LORDS ' adhered.'

*Kilkerran, (FOREIGN.) No 3. p. 205.*

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to payment of principal and interest, before delivery of the goods to the proper owner.