

1759. February 8. M'DONELL *against* KING'S ADVOCATE.

No. 62.

The subsistence of a right of wadset found proved in favour of the Crown by producing the extract of a sasine, in favour of the wadsetter, who was under forfeiture.

Fac. Coll.

* * This case is No. 339. p. 11673. *vide* PRESUMPTION.

1771. July 26.

ELISABETH and MARGARET MARY NIMMO *against* ANDREW SINCLAIR.

No. 63.

What is sufficient evidence ?

James Nimmo, the pursuers' father, in the year 1743, entered into a second marriage, with Lady Janet Hume, daughter of the Earl of Marchmont. Her portion was £.1000, secured to her by a bond of provision from her father, corroborated by her brother.

About the year 1749, there being then no prospect of children, Lady Jane had agreed to settle the greatest part of her portion upon the pursuers, James Nimmo's children by his first marriage; and she accordingly executed an assignation in their favour, which was immediately delivered to her husband. She afterwards changed her mind; and having got possession of the deed, destroyed it.

Mr. Nimmo died in the year 1758, in bankrupt circumstances; so that none of the provisions in Lady Jane's favours, made at entering into the marriage, were fulfilled. The contents of her bond of provision were uplifted from Lord Marchmont, to which the pursuers consented; but as they had always maintained their right to this sum, in virtue of the assignation in their favour in the year 1749, that consent was qualified with a reservation of all action against Lady Jane, her heirs, &c. upon the said assignation. The money was uplifted, and sunk. In 1761, Lady Jane drew £.1800 from the executry of her brother, the Lord Register; and in 1770 she died, having, by a will, bequeathed all she had to the defender, her relation.

The pursuers brought an action for proving the tenor of the assignation mentioned; and, in their summons, set forth, what they conceived to have been the terms of it, viz. that it had been an absolute assignation to Lady Jane and her husband in life-rent, and to the pursuers in fee; that it contained no reserved power to alter; and bore, as was the fact, to have been instantly delivered to James Nimmo, to be kept for the benefit of all concerned.

There was no collateral writing of any kind exhibited or referred to, as affording a *talis qualis* proof of the precise terms of the deed; but, in support of the action, the pursuers founded on the following facts, circumstances, and presumptions, as sufficient evidence