

1675. July 16.

CAMPBELL and RIDDOCH *against* STEWART.

No 115.

ONE having disposed lands to his third son, in the disponee's contract of marriage, and thereafter disposed the same lands to his second son, with the burden of debts; in a competition betwixt the first disponee and an onerous purchaser, from the second disponee, both craving adjudication in implement of their dispositions; the LORDS found the long latency of the first disposition sufficient to prefer the onerous purchaser who had bought *bona fide*, thus far, to make up his just and true interest, but not to give him any advantage by the bargain; and therefore adjudged in his favours, under reversion to the first disponee, upon payment of what was truly wanting to the onerous purchaser. See the particulars of this case; *voce* ADJUDICATION, p. 54.

*Fol. Dic. v. 1. p. 75.*

1677. January 16.

EARL of GLENCAIRN *against* BIRSBANE.

No 116.

IN the reduction at the instance of the Earl of Glencairn against John Birsbane, of his right of the lands of Freeland, and declarator, that a reversion in favours of the heir of the disponer's own body, to take effect after the disponer's death, was fraudulent, purchased by the disponer's means, and therefore should be holden to be as taken to the disponer himself, and that it might be affected by the pursuer as his creditor:—The defender *alleged*, that this disposition was for an adequate price, and therefore there was no prejudice to the disponer's creditors; and as to the reversion, it was a personal favour to the disponer's heirs-male of his own body only, and did not make the right as a wadset, but it remained a true sale; neither doth any gratuitous right, procured to a son, become affected by the father's creditors, unless the father had exhausted his estate, which the creditors might have affected by purchasing thereof:—Which defence the Lords found relevant.—It was now further *alleged*, That the price was not adequate, because the pursuer offered to give 2000 merks more, and to find out a tenant that would take a nineteen years tack for 500 merks yearly, the land never having been set, but still in mainfing, which, at twenty years purchase, will be 10,000 merks, whereas the price is but 8000 merks; and where debtors have not an estate sufficient for their debt, the greatest price that can be obtained should be sustained, though it be above the ordinary price.—It was *answered*, That the price of affection or emulation is no just ground to reduce a disposition, otherwise no man would buy from persons that are in great debt; but a competent price hath ever been sustained, and the procuring of a tenant to take above the true value, whose hazard may be secured is not sufficient.

A conveyance for an adequate price, is not reducible by the creditors of the granter.

THE LORDS adhered to their former interlocutor; but seeing the land was not set but in mainfing, they would prefer neither party in the probation of the ren-