

1749. November 21. WILLIAM BRODIE *against* JOHN STEVEN.

JOHN DUNBAR of Burgie drew on Sir Ludovick Grant, in these terms, " Out of the first and readiest of my fund of the estate of Dalmahoy, pay to Simon Dunbar, or his order, L. 100 Sterling; which shall be allowed you in part payment of the same."

Simon Dunbar had been sent to town by his father Burgie, for his education as a merchant; and being in the service of John Steven, indorsed the bill to him for value; after which he went abroad; the value being a list of debts to be paid when he recovered the money.

A creditor of Burgie's arrested in Grant's hands; and, upon its being owned that his interest on Dalmahoy was a trust for Burgie, pleaded to be preferred to Mr Steven, on the act 1621; as the bill was a gratuity from a father, after he was insolvent, to his son.

THE LORD ORDINARY, 15th Febuary, " In respect it was admitted it was not proven Burgie was habite and repute insolvent, at the time of his drawing the bill in question; repelled the objection to it founded on the act of Parliament 1621, Mr Steven being an onerous assignee to the said bill."

Pleaded in a reclaiming bill, To reduce a deed in favour of a conjunct person, it is not necessary to prove known, but only actual insolvency.

Answered, The indorsee cannot be looked upon as in any fraud, for having taken an indorsation of a bill, from a father to a son, designed to furnish him with necessaries for his education, and outsetting in business; and with which necessaries he furnished him accordingly.

Observed, that this case was the same as if the father, for necessaries furnished to his son, had granted bill to the furnisher; being only made payable to the son for conveniency, that he might provide himself by indorsing it, his father not being at hand.

THE LORDS found that the case did not fall under the statute 1621.

A&C. H. Home.

Alt. T. Hay.

Clerk, Pringle.

Fol. Dic. v. 3. p. 48. D. Falconer, v. 2. p. 112.

1760. August 1.

GEORGE BEAN, Deputy Sheriff-Clerk of Aberdeen, *against* RACHEL STRACHAN, Daughter of William Strachan senior, Merchant in Aberdeen.

WILLIAM STRACHAN junior, merchant in Aberdeen, being debtor to his sister Rachel Strachan in a bond for L. 240,* and finding his affairs in a desperate situ-

* See Executors of McCommie against Strachans, 29th July 1760, Fac. Col. p. 440. *vote* LEGACY in this Dictionary.

No 36.

Indorsation of a bill from a father, actually, but not notourly insolvent, to a son, found not to fall under the act 1621.

No 37.

A person insolvent discounted bills, and paid a debt to his sister with the cash. She was ignorant of his insolvency.