

person, nor was it in prejudice of creditors their anterior diligence against him; and so being against no law, his disposing cannot be quarrelled, and consequently the right and conveyance he made to Sir Thomas stands good, though it was gratuitous *quoad* young Lanton, who got nothing for it. Sir George M'Kenzie, in his Observes on that act of Parliament 1621, thinks a gratuitous disposition granted by an insolvent person, falls under that act; and Stair, in his Institutions, p. 81.* declares such dispositions quarrelable.—Yet the LORDS, by plurality, (sundry dissenting) found Sir Thomas not being a confident person to Lanton, that the disposition and right he received from him could not be reduced on the head of mere insolvency, where he was not under diligence nor had retired; nor had the other marks now contained in the standard made for bankrupts by the late act of Parliament. (*Vide infra* Div. 2. Sect. 5. *inter eosdem*.)

Fol. Dic. v. 1. p. 66. Fountainball, v. 2. p. 11.

1751. June 25. ALEXANDER CORSAN *against* CAMPBELL of Shawfield.

SIR THOMSON GORDON of Earlston disposed his estate to his son Thomas Gordon, under the burden of debts contained in a list, in which the pursuer's in this case was not insert.

Sir Thomas and Thomas Gordon disposed the estate to Daniel Campbell of Shawfield, whose daughter Mr Gordon had married; on this narrative, 'That they were owing certain great debts to different persons their creditors; and that he, for payment of the said debts, had advanced and paid to the said Thomas Gordon a certain sum of money, as the agreed price of the lands and estate; whereof Thomas Gordon granted the receipt.'

A contract had been drawn up, purporting, That Sir Thomas and his son should dispose the estate; that Shawfield should therefore pay to the creditors ten shillings in the pound; and that they should accept thereof; providing, that if any of them should not subscribe, the subscribers should be free: But this was not signed by Sir Thomas, nor by many of the creditors.

Shawfield paid to most of the creditors this composition; and had their debts made over to him.

Alexander Corfan merchant in Hamilton, who had been cautioner for Sir Thomas for 1000 merks Scots, and creditor by bond for L. 60 Sterling, insisted in a reduction of both dispositions.

Pleaded for the pursuer, The disposition by Sir Thomas to his son is reducible, in so far as the value of the estate exceeded the sum of the debts undertaken by him: And the disposition to Shawfield is reducible, as, contrary to the narrative thereof, he paid no money for the same: And the pursuer is not concerned with any alleged concert of paying to the creditors ten shillings in the pound, as he was no party to any such concert, nor signed the contract: The pursuer is not concerned to plead against the disposition's being sustained to Shawfield, for the

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* Page 83. of edition 1759.

No 9.
he was not bankrupt in terms of the act 1696, and the persons favoured were not confident, the bond was good.

No 10.
A debtor sold his estate at an agreed price. The disponee, instead of advancing the sum, became bound to pay 10s. per pound to the granter's creditors. The sale reduced upon the statute 1621, at the instance of a creditor not acceding; reserving the disponee's claim for what he had actually paid to any creditor.

No 10.

sums actually paid by him to the creditors: There will be sufficient after that to pay this debt.

Pleaded for the defender, The pursuer is grasping at an undue advantage: This estate was subject to a liferent to Sir Thomas, and to contingent liferents to his and Mr Gordon's ladies; if the creditors had proceeded to diligence, they could not have made so much as the composition; and therefore the agreement was made, whereby the liferenters renounced their rights, and Shawfield undertook to pay it; and it is acknowledged the view was to save something to the family: If this pursuer was not at the meeting of creditors, where this agreement was made, he at least knew of it, and did not impede the execution, so far as it has gone: If he will insist on Shawfield's obligation, he must comply with the terms of it, and accept the composition; if he waves it, then the estate is disposed to Shawfield; the debts are also conveyed to him, and he can use them to the full extent, which will exhaust the value; and the disposition is not reducible, as it is not without any true, lawful, or necessary cause; and without a just and true price; nor are the creditors lesed thereby.

Observed, That the disposition for a sum advanced, which was not true, and not for payment of debts, was without any cause, and reducible: That the estate remained affectable for Mr Gordon's debts; and might be affected by this pursuer, and also by Shawfield for the debts in his person: That when this was done, it would fall to be determined, in the competition betwixt them, whether he could charge them to the full extent, or in so far as he had paid: It was said, as he was trustee for Mr Gordon, he could only state to him what he truly paid; nor more in a competition with his creditors: But the question was not proper here.

THE LORDS, 31st January, found, That the disposition in favour of Campbell of Shawfield was reducible upon the act of Parliament 1621; and therefore reduced the same accordingly; referring to Shawfield to claim the half or whole of the debts paid by him, as accorded of the law. And on bill and answers, adhered.

Reporter, *Elchies*. Act. *Lockhart*. Alt. *H. Home*. Clerk, *Pringle*.

Fol. Dic. v. 3. p. 48. D. Falconer, v. 2. No 212. p. 254.

1754. July 6.

BROWN and Others against MURRAY.

No 11.

A sale by a bankrupt, for a full price, so far reduced as to bring in the creditors all *pari passu*.

JOHN GILLESPIE, possessed of a grass farm and a large stocking of sheep, &c. fell into labouring circumstances. He had been taken with caption, and let go upon payment. And apprehending a discovery of his circumstances, which would bring all his creditors upon him, he assigned his tack, and sold his stocking to John Murray his son-in-law, at a price which was agreed on all hands to be equal. Whether he had any view in this transaction to benefit his favourite creditors, who lived all in the neighbourhood, or whether he meant only to prevent