

a disposition from her father, and that being reduced, yet the Lords sustained it to give him the liferent and courtesy, though his wife was never infeft, because it was presumed, that if he had not got that disposition, he would have infeft his wife, as heir, and so have got the courtesy. *2do*, In the case of Kinloch *contra* Blair, No. 14. p. 389. a disposition reduced by an adjudger, yet was so far sustained as to bring in the receiver of it (though he had not adjudged) *pari passu* with the adjudger, on this plain presumption of law, that if I had not got the said disposition, I would certainly have adjudged within year and day of you. *3tio*, They cited Balmerino's case, 18th February 1662,* who being the Earl of Somerset's trustee, and pursued by Bedford, he was allowed retention of what debts were contracted afterwards, even against a singular successor. *Answered*, The act of parliament 1696, defining notour bankrupts, declares such dispositions made within 60 days of their breaking to be simply void and null in themselves, *et quod ipso jure nullum est, nullos sortitur effectus*; and if the receivers of such dispositions were so far countenanced and supported as to bring them in *pari passu* with the other creditors, every bankrupt would be courted by some of his creditors to grant such dispositions, knowing that, at the worst, they would come in equally with other creditors neglected by the bankrupt, but who had prevented them in affecting the subject by doing legal diligence. And, as to the decisions cited, they were stretches of the Lords *officium nobile*, in supplying their omissions, which are not to be drawn in example.—THE LORDS found the disposition simply null, and that it could not even subsist to bring them in *pari passu*; and so preferred the arresters. In this process it was farther urged for these creditors who had carried on this reduction on the head of bankruptcy, that they having removed this middle impediment of the disposition out of the way, they ought to have the expences wared out in this process, over and above their debts, as is done in rankings, and the sale of bankrupt's lands; this being as profitable to the creditors behoof as these common actions are. It was not determined at this time, but was afterwards refused in this process. (Referred to in Section 8th, Division 3d, *b. t.*)

Fol. Dic. v. 1. p. 74. Fountainhall, v. 2. p. 156, 158, 244.

SECT. XV.

Of Alienations to singular Successors.

1672. February 6. DOCTOR HAY *against* MARJORY JAMISON.

DOCTOR HAY pursues a reduction of a tack for two nineteen years granted by Patrick ———, his debtor to Kinnaird his spouse, of the land of Attroch, for 20 pounds yearly, and payment of the teind; the narrative of the tack bears, that he had given a promise before, to grant the same, whereby the benefit of the

NO 114.
A reduction of a gratuitous right, upon the act 1621, is sus-

* Earl of Bedford against Lord Balmerino, Stair, v. 1. p. 101. *voce* MUTUAL CONTRACT.

No 114.
tained against
a singular suc-
cessor in the
right, where
it bears in it-
self to be
gratuitous.
In that
case the sin-
gular succef-
sor, although
paying a
price, cannot
pretend to
acquire *bona*
fide.

tack was six chalders of victual yearly to her. The reason of reduction was upon the act of Parliament 1621. It was *alleged* for Marjory Jamison who now has right, That the said act of Parliament declares singular successors, acquiring *bona fide*, for onerous causes, and so not being partakers of the fraud, to be excepted from the act, and the right of this tack has come through several singular successors to this defender for onerous causes. The defender *answered*, That the exception of the act of Parliament hath no place where the first right doth not at least bear an onerous adequate cause; for if it be for love and favour, or without any cause, as this tack is, no singular successor can pretend to acquire it *bona fide*, or to be ignorant that the right they acquire is without a cause onerous.

Which the LORDS found relevant, and reduced the tack.

Fol. Dic. v. 1. p. 74. Stair, v. 2. p. 63.

* * * Gosford reports the same case thus:

IN the reduction, at Doctor Hay's instance against Marjory Jamison, he having insisted for reducing of two tacks set by Patrick Con of the lands of Artrachie, which the Doctor had comprised: To which Marjory had right by transaction from George Stewart, upon this reason, That the said tacks were first granted by Patrick Con of Artrachie, the common debtor, for 15 and 19 years after his decease, and that without any onerous cause, she having before a liferent tack of the same lands in lieu of her conjunct fee-lands in her contract of marriage. It was *answered*, That albeit these tacks might be reduced upon that reason, if they had continued in the person of the wife, yet she having disposed the same for onerous causes before they were quarrelled, who *bona fide* had acquired the right thereto, they did not fall under the act of Parliament anent bankrupts, but on the contrary, by the said act, rights made to third parties by confident persons are declared valid as to them.

THE LORDS having considered the tacks, which did bear for no onerous cause at all, and that the acquirers could not but know, that being made to a wife, in so far as they exceeded the provisions in her contract of marriage, they were *donatio inter virum et uxorem*; they found that a singular successor, albeit he acquired a right for an onerous cause, was in no better condition, than if they had remained in the wife's person; and found a great difference betwixt the rights made for no onerous cause to a confident person, and those that did bear for causes onerous, as to singular successors who did acquire from them.

Gosford, MS. No 464. p. 241.

* * * See Robertson against Brown, 11th July 1637, Durie, p. 850.

voce COMPETITION.