1675. *July* 16. CAMPBELL and RIDDOCH *against* STEWART.

No 115.

ONE having diſponed lands to his third ſon, in the diſponee's contract of marriage, and thereafter diſponed 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.
A conveyance for an adequate price, is not reducible by the creditors of the granter.

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 mainſing, 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.

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

No 116. tal, or price, but allowed either party to adduce witneſſes what the land was worth, and might pay as at a conſtant rent, and what it was worth in buying and ſelling in that place of the country. *See* No 41. p. 911.

Stair, v. 2. p. 494.

1679. *December* 23. GORDON *against* FERGUSON.

No 117. A conveyance from a conjunct perſon to a ſingular ſucceſſor, who could not plead *bona fides*, ſuſtained only to the extent of the ſums actually paid.

GORDON of Troquhen purſues a reduction of an infeftment granted by Cannon of Blackmark to Cannon of Marrogat, his brother, bearing, for undertaking all his debts, and for love and favour; and of a diſpoſition granted by Marrogat to Ferguſon of Keiroch; the reaſon of reduction was upon the act of Parliament 1621. The defender *alleged* abſolvitor, becauſe he was no conjunct perſon, nor partaker of the fraud betwixt the two brothers, but paid a competent price; and by the foreſaid act, third parties not partaking in the fraud are ſecure.—The purſuer *answered*, That Ferguſon was neceſſarily partaker of the fraud, it being in the body of his author's right, that albeit it bore *for undertaking the disponer's debt*, yet there was only 600l. mentioned in a blank, which is ſcored, and which could not be an adequate price.—THE LORDS found, That Ferguſon could not be free of the participation of the fraud in his author's right.—It was further *alleged* by Ferguſon, That the ſum expreſſed in Blackmark's diſpoſition to his brother, was due to him, and therefore he might lawfully take a diſpoſition from Blackmark, or from Marrogat his brother, which behoved to be effectual, as to his own ſum, which was Blackmark's anterior debt.

THE LORDS ſuſtained the diſpoſition, in ſo far as concerned Ferguſon's own ſum due by Blackmark, but declared the right might be affected by the purſuer *quoad reliquum*, that he might redeem upon payment of Ferguſon's ſum, unleſs it were proven that Blackmark was a notour bankrupt, when he diſponed to his brother; and ſo could not diſpone to one creditor in prejudice of another.

Stair, v. 2. p. 726.

No 118. A diſpoſition by a man to his brother-in-law was found null, unleſs the cauſe onerous were inſtructed; and in a reduction againſt an onerous purchaſer from the brother-in-law, the

1680. *January* 24. CRAWFORD *against* KER.

ANDREW CRAWFORD having appriſed ſome tenements in Glaſgow from Mungo Matthie, purſues the tenants for their duties. Compearance is made for James Ker, who produceth an anterior diſpoſition by Mungo Matthie to James Wilſon, and by James Wilſon to Ker, with infeftment conform, and *alleged* that he had the prior and better right.—The purſuer *answered*, That the right by Matthie the common author did bear Wilſon to be Mathie's good-brother, ſo that the narrative in the diſpoſition proves not the onerous cauſe; and therefore law eſteems it as a gratuitous deed between conjunct perſons, and ſo is null by the act of Parliament 1621.—It was *replied* for Ker, That by that ſame act of Parliament, rights