

they would sustain the payment not exceeding an aliment, as it uses to be modified to prisoners for debt, which the donatar would be obliged to furnish him.
Fountainhall, MS.

No 453

1679. December 6. JOHN SINCLAIR *against* GEORGE DICKSON.

No 454

IN a reduction upon the act of Parliament 1621, the LORDS found a cousin-german was not a conjunct person, so as to oblige him to prove the onerous cause of his disposition, otherwise than by his own narrative. THE LORDS thought an apparent heir of tailzie and provision, by accepting a disposition, may be liable as well as *successor titulo lucrativo post contractum debitum*, but it was not decided, and it deserves consideration.

Fol. Dic. v. 2. p. 254. Fountainhall, MS.

1680. June 22. TROTTER *against* HUME.

No 455

ROBERT TROTTER pursues a reduction of a disposition granted by George Hume in favour of umquhile Major Hume, as being in defraud of him a lawful creditor, without a cause onerous; for though it bear, for sums of money paid and undertaken, conform to an inventory, yet *non constat* that the sums undertaken were paid, or that they were just and resting debts; so that it is not an equivalent cause onerous, till the inventory be produced, and the debts to be instructed to be true debts, and paid by the buyer. It was *answered*, That the narratives of dispositions need no further instruction, when the buyer is a stranger, and no conjunct or confident person, unless the contrary be proved by writ, or the defender's oath; for it is ordinary for buyers to undertake debts as a part of the price, and to retire the principal bonds to the seller, and never conceive themselves obliged to keep inventories, or instructions, which are sufficiently instructed by the narrative of the disposition; nor are they obliged to debate, whether the debts they paid by the seller's order were due or not, but as they might pay the price to the seller, so they might to any to whom he ordered payment, without inquiring the cause. It was *replied*, That the inventory and instructions ought at least to be instructed so far as extant, because if the debts undertaken be not paid, the pursuer may arrest, and in the inventory the pursuer's debt may be comprehended.

Fraud against creditors not inferred by a disposition of lands for debts.

THE LORDS found the narrative of the disposition of undertaking the debts, did instruct the cause onerous, the buyer not being a conjunct or confident person, and would not oblige the buyer's heirs to produce the inventory, or the instructions thereof, even so far as extant, unless it were offered to be proved thereby, that the pursuer's debts were a part of the price contained in the

No 455. inventory, but left the pursuer to the ordinary course of arrestment, for making furthcoming any part of the price unpaid.

Fol. Dic. v. 2. p. 253. Stair, v. 2. p. 772.

* ** Fountainhall reports this case :

THIS being likewise on the said act of Parliament 1621, *alleged*, They not being conjunct persons were not bound to instruct farther the onerous cause of their disposition than by its own narrative. *Answered*, They must condescend farther, because it bears not the simple receipt of money, but is for debts undertaken conform to an inventory. THE LORDS sustained the disposition, and found the defender was not holden to produce or instruct the said onerous cause or inventory, unless the pursuer would offer to prove by his oath, that his debt was one of the debts contained in the inventory which they were burdened to pay ; 23d June 1680, Mary Piers against John Black, vintner, (*See APPENDIX*) The warrandice of his tack would indeed import that there should be no eviction nor pretender to the property or possession of the house, that should disturb or dispossess him, but will not extend to a casual accident of a neighbour's building, which though it incumbered the entry to his house, yet did not totally obstruct it ; for if the obstruction had been total, I think the LORDS would have freed him from the duty, as they do with tenants *in prædiis rusticis* where there is a total vastation *per vim græculorum*, by thunder, &c. falling out, *sine culpa conductoris, ut D. l. 33. & 35. Locati Conducti.*

Fountainhall, MS.

1680. June 22.

SINCLAIR against DICKSON.

No 456.

In a reduction of a disposition, as being in defraud of creditors, the purchaser's heir was appointed to instruct the onerous cause of the disposition, so far as he could. The purchaser had been cousin once removed to the seller.

JOHN SINCLAIR pursues reduction of a disposition made by Dickson of Buchtrig to umquhile Mr Robert Dickson, Advocate, as being without a cause onerous, in defraud of him a lawful prior creditor. The defender *alleged*, Absolviator, because the disposition bears to be for sums of money, and causes onerous, which sufficiently instructs, not being conjunct and confident persons, Mr Robert being cousin-german only once removed to Buchtrig. It was *answered*, That the narrative here is not only for sums of money, but for other causes and considerations, which is always understood to be for love and favour, and not an adequate cause onerous, even among strangers, much more in this case, where Buchtrig had no children, and disposed his whole estate to Mr Robert, who was as near to him as any, and the only man like to preserve and increase it of his kin ; and now Mr Robert being dead, and that his oath cannot be had for instructing of the true sums paid, Mr George Dickson, as his successor, ought to instruct the narrative.