

in so far as, in the bond granted by Broomhall to her father, it was expressly provided, that, failyieing of her father by decease, the money therein contained should be paid to her, conform to the substitution.

Whereunto it was REPLIED by the said Robert Brown, that the foresaid substitution and provision is null, and falls within the compass of the Act of Parliament 1621, as being a provision by a father in favours of his own daughter, in prejudice of him, an anterior creditor; whereupon he has reduction depending.

Whereunto it was DUPLIED, That the provision could not be reduced, unless the said Robert would allege and prove that the father, Andrew Bryson, was bankrupt.

The Lords preferred the creditor, Robert Brown, to the bairn whose name was inserted in the bond; and found, That a father cannot provide his own children to the prejudice of lawful creditors; especially in this case, where the ground of the debt was præexisting the granting of the bond, albeit it was not constituted by a decreet-arbitral till a year after. &c.

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1666. June 28. JOHN SCOTT *against* SIR ROBERT MONTGOMERIE.

John Scott, merchant, having pursued Sir Robert Montgomerie for payment of a debt owing by Sir James Scott of Rossie to him; and having pursued Sir Robert and his lady, as intromitters with the goods and gear of Sir James Scott;

It was ALLEGED for Sir Robert, That his intromission was by virtue of a disposition from Rossie; and whereof he was in possession before Rossie's decease.

To which it was REPLIED, That no respect could be had to the disposition and possession; because it was by Rossie, his good-father, to him, a confident person, being his son-in-law, and in prejudice of a lawful creditor, *et post contractum debitum et realem possessionem*; in so far as the pursuer offers him to prove, that Rossie remained in the possession of the whole plenishing of his dwelling-house of Rossie, where he staid aye and while his death, and while they were intromitted with by the defender; so that he being *in libello*, ought to be preferred to the probation.

The Lords found the disposition of the moveables, with the instrument of possession, sufficient to liberate the defender from a vicious intromission; without prejudice to the pursuer, to pursue for the goods themselves.

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1666. July 3. The EARL of CALLENDER *against* SIR ROBERT ELPHINGSTOUN of QUARREL, and OTHERS.

THERE being a spuilie of teinds, pursued at the Earl of Callender's instance, against Sir Robert Elphingstoun of Quarrel, and divers others; and the Earl, having produced his seasine, and several inhibitions and tacks from the parson of Falkirk:—

The Lords would not sustain process, because the pursuer did not libel upon his tacks, but only as heritable proprietor of the teinds; whereunto the Lords