

which was upon denunciation at the head burgh of the regality at that time. But the Lords did not determine whether such an apprising would have been valid if there had not been a more formal one; nor whether the dispensation being granted at Glasgow was valid.

No 445-

*Fol. Dic. v. 2. p. 252. Stair, v. 1. p. 697.*

1671. November 29. WHITEHEAD *against* LIDDERDALE.

WILLIAM WHITEHEAD being vassal to Lidderdale of Isle, obtained from him a disposition of the superiority to be held of the King, but Isle dying before he was infest, Robert Lidderdale, his son and heir, disposes that same superiority to Thomas Lidderdale, his brother. Whitehead pursues Robert to fulfil the disposition, and obtains decret, and now pursues a reduction of Thomas Lidderdale's right, as fraudulent betwixt conjunct persons, without a cause onerous, in prejudice of him who had a prior disposition. The defender *alleged*, Absolvitor, because his disposition bore to be for onerous causes. The pursuer *answered*, *Non relevat*, to prove the onerous cause by the narrative of the disposition, being an assertion of one brother in favour of another, unless it were otherways instructed. The defender *answered*, That though the Lords have not sustained the narratives of dispositions to prove in favour of descendants, yet they have not extended the same to collaterals, but the most that can be done is, to condescend upon the cause, and to depone thereupon.

No 446.

A disposition of lands by a bankrupt to his brother, bearing onerous causes, was not sustained as probative of its narrative.

THE LORDS sustained the reason of reduction and reply, and found that the cause onerous in the disposition behoved to be proved by the defender.

The defender further *alleged*, Absolvitor, because the defender hath other sufficient rights flowing from Sir Robert Maxwell and Sir David Dunbar, which will altogether exclude the pursuer's right. It was *answered*, That this reduction upon the act of Parliament being only declaratory, and having no possessory conclusion, no other right the defender has can impede the same, but they ought only to be reserved as accords, when the pursuer insists for possession. It was *answered*, That the defender might defend himself upon all his rights in what order he pleased, and it is in vain for the pursuer to crave declarator, seeing it could have no effect.

THE LORDS repelled the defence, and sustained the reason of reduction, reserving the defender's other rights, as accords.

December 14.—WHITEHEAD pursues a reduction against Thomas Lidderdale of a disposition granted to him by his brother, after contracting of the pursuer's debt, as done betwixt conjunct persons, *in fraudem creditorum*; and that albeit it bore an onerous cause in the narrative, yet being betwixt two brothers, it cannot prove, but must be otherways instructed.

No 446.

THE LORDS having appointed the defender to condescend on the onerous cause, and what were the instructions thereof, he condescended upon 4000 merks delivered in money by him to his brother, and offered to make faith, that it was truly so done, and that the act of Parliament required no further but oath of the party; which the LORDS sustained not, unless it were otherways instructed.—See REDUCTION.

*Fol. Dic. v. 2. p. 252. Stair, v. 2. p. 13. & 23.*

\* \* \* Gosford reports this case :

IN a reduction at Whitehead's instance of a disposition made to Lidderdale by his brother, as being *in fraudem creditorum*, and posterior to the pursuer's debt, it was *answered*, That the disposition was opposed bearing for sums of money and onerous causes, so, by the act of Parliament 1621, anent dyvours, it could not be taken away but *scripto vel juramento partis*. It was *replied*, That the disposition being betwixt conjunct persons, viz. a brother and a brother, the defender ought to condescend upon an onerous cause, and instruct the same. It was *duplied*, That albeit the Lords have so decided in several cases where the rights flowed from a father to a son, yet this right flowing from a brother to a brother, and that for an onerous cause, and sums of money received, could not be reduced, but upon a reason referred to his oath *vel scripto*.

THE LORDS having considered the case so as to make a practick thereof, found, That the defender ought to condescend upon and instruct an onerous cause, seeing the disposition was made by one brother to another, and that it might open a door to great fraud and circumvention, if rights made betwixt such persons could not be questioned but while the reason was referred to the brother's oath; but if the relation were more remote than betwixt brother and brother, they inclined not to extend the same.

*Gosford, MS. No 423. p. 213.*

No 447.

1671. December 5:

DUFF against FORBES.

A DISPONEE having produced two bonds due to him by the disponer, and offering to give his oath, that these were the onerous cause of the disposition; the LORDS found this relevant.

*Fol. Dic. v. 2. p. 252. Stair.*

\* \* \* This case is No 260. p. 12428.