

of the invasion, and that the assaulting was upon a sudden occasion and misdemeanour, so that he could not be thought accessory thereto; and for the ratihibition by imprisonment, that it was only until he should keep a regality court, like as the first lawful day he did liberate the person wounded, and gave sentence against the defender.

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1672. February 20. GEORGE SHAW of SAUCHIE against The LAIRD of CLACKMANNAN.

GEORGE Shaw, apparent heir of Sauchie, having pursued the Laird of Clackmannan for an annualrent of 3000 merks yearly, since the date of a missive letter, written by Clackmannan *in anno* —; as likewise for granting him a reversion of his land estate, worth 40 chalders of victual, and of his coal rent, worth £10,000 yearly, upon this ground,—That Clackmannan, and other friends, in the foresaid missive letter, had declared that they were willing to infest the pursuer and his wife in the said annuity, and that his estate was worth so much of yearly rent;—it was ALLEGED for the defender, That the letter was not obligatory, because it was only written, at the pursuer's desire, to Mr Mungo Murray, minister in England, of purpose to induce him to give a good portion with his only daughter, whom the pursuer had married; and the letter was qualified with a provision, in case he should give a suitable meeting, considering his interest in the parties. But so it is, That he was so far from giving any meeting, that he did disinherit his daughter, and disposed all his estate, which before he had provided to her, in favours of Auchtertyre.

It was REPLIED, That the said missive letter, as to any provision of his wife, being qualified, as said is, albeit it was not obligatory in her favours, yet, as to the pursuer's interest, which was distinct,—*viz.* that he might have an annuity of 3000 merks until count and reckoning was made; as likewise a reversion, bearing, that the defender being satisfied of his debts and engagements, if his intromission with an estate of the foresaid value did not amount thereto; and that being satisfied, he should dispose an estate worth 40 chalders of victual, and £10,000 of yearly rent,—the letter was obligatory.

The Lords did find, That, the letter being written by the pursuer's friends, not to himself, but to his father-in-law, to induce him to do a favour to the pursuer, and that upon a special provision, which never took effect, it was not at all obligatory as to any thing therein contained against Clackmannan; but reserved to the pursuer to call Clackmannan to account for his intromission, according to the true rent of the estate, that, being satisfied of his engagements, he might dispose the same.

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1672. February 23. MR STREET, Merchant in London, and JACKSON, against JAMES MASSON.

IN a reduction and declarator, at the instance of the said Mr Street and

Jackson, against James Masson, as son to James Masson, his father, upon this ground :—That they being creditors to James, the father, for £3000 sterling, for which they had bonds for merchant ware, bought and delivered ; and albeit the bonds were dated after an infestment granted by the father, who was debtor, to the defender's own son, yet there being a constant and uninterrupted trade betwixt the pursuers and the defender's father, which was begun long before the right made to the son, the furnishing thereafter ought to be considered with a respect and dependence to the first correspondence, so as to give an interest to the pursuers, as lawful creditors, to reduce the right made by the father, their debtor, to his son, for no onerous cause ; he being *in familia*, and having no other estate of his own.

It was ALLEGED for the defender, That it being clear, by the pursuers' discharges, that they were satisfied of all debts due by the father before the son's infestment ; by our law and practick, the father might give a lawful right of his estate to his son ; which being public, and might be found and known at the public registers, can never be affected with any debts contracted thereafter ; seeing the Act of Parliament 1621, against bankrupts, is only in favours of lawful creditors, who are prior to rights made to conjunct persons, as being done *in fraudem creditorum*, but was never extended to posterior creditors, in prejudice of those who get rights and dispositions before the contracting of this debt, unless they were *participes fraudis* ; which could not be here alleged.

It was REPLIED, That the pursuers were founded, in common law, and the law of nations, for securing of public trade and commerce ; for *actio pauliana* was competent to all lawful creditors, for the reducing of the conveyance of any estate made by debtors for no onerous cause, albeit the debts were contracted after the said dispositions ; and, by our practicks, as in the case of Lord Newbyth and Burgy, and the creditors of John Pollock in the Canongate, the rights made by the father to the son were reduced, albeit they were creditors after the said rights ; and in this case the fraud was most palpable and gross, the father and son being of one name, and the father continuing in possession until after the contracting of the pursuers' debts.

The Lords,—having seriously considered this as a new case, and the favourableness of the pursuers, who were strangers, and ignorant of our law for seeking after public registers ; as likewise, on the other part, the great preparative and inconvenience of opening a door to innumerable pleas, for which we had neither law, practick, nor Act of Parliament, the defender being altogether innocent of the father's fraud, whereof all were convinced ; as also finding, that the foresaid decisions were only in the case of latent rights, and not of public infestments :—they, before answer, did ordain old Masson's count-books, and all his writs of real estate, to be produced, that it might be known if he had any estate besides what he had disposed to his son, which might satisfy his debts, so that he became depauperate by loss and misfortunes. As likewise, that probation might be led, if, notwithstanding of his son's infestment, he did still remain master of the whole rights made to his son, so that he might destroy the same at his pleasure, that thereafter they might further consider upon this debate.