

1672. *January 9.* ROBERTSON *against* ROBERTSON.

No 448.

MR WILLIAM ROBERTSON pursues a reduction of a disposition of lands to David Robertson, granted by David's father, as being in defraud of him, being the father's lawful creditor, betwixt most conjunct persons, without a cause onerous; and though the disposition appear to be for particular debts, yet it cannot prove *contra tertium*. The defender *alleged*, Absolvitor, because he offered him to prove, by the creditors' oaths, mentioned in the disposition, that he had paid to them the sums particularly expressed therein. It was *answered*, *Non relevat*, unless he could instruct that they were debts truly due by the father, at the time of the disposition; at least, that he had retired and preserved the cancelled bonds; and that every creditor was but *singularis testis*.

THE LORDS found, That the oaths of the several creditors conform to the disposition, was sufficient to take away the presumption of fraud, and that the defender was not obliged to keep the retired bonds 40 years by him.

*Fol. Dic. v. 2. p. 251. Stair, v. 2. p. 40.*

1673. *November 28.* CAMPBELL *against* CAMPBELL.

No 449.

A DISPOSITION by a bankrupt to his brother, bearing to be for security of a sum instantly borrowed, cannot be taken away but by the disponee's oath. THE LORDS considered, that this was not the same case with that of a disposition, bearing onerous causes in general, which must be otherwise instructed than by the disposition.

*Fol. Dic. v. 2. p. 251. Gosford.*

\* \* \* This case is No 14. p. 9396. *voce* OATH OF PARTY.

1676. *January 18.* CROCKET *against* RAMSAY.

No 450.

AN assignation of a bond to a conjunct person, bearing onerous causes in general, was found not to prove its onerous cause to bar compensation pleaded for the debtor, though the liquidation was posterior to the intimation of the assignation.

*Fol. Dic. v. 2. p. 253. Stair.*

\* \* \* This case is No 120. p. 2652. *voce* COMPENSATION.