

1663. February 6.

LORD LOURIE *against* EARL OF DUNDEE.

THE Lord Lourie pursues a reduction of a disposition, made by Carnegie of Craig to the Earl of Dundee, as being posterior to the pursuer's debts, and in prejudice thereof, upon the act of Parliament 1621, against bankrupts; and, for instructing of the reason, repeats the disposition itself, being betwixt confident persons, cousins-german, and without cause onerous, in so far as it bears reservation of the disponent's and his Lady's liferent; and provision to be null, if Craig have heirs of his body, in whose favours Dundee is to denude himself, upon payment of his expence.—The defender *alleged*, That the libel is not relevant. *Imo*, Because Craig is no bankrupt, nor any diligence done against him, before the disposition. *2do*, He is not insolvent by the disposition, because there is reserved to him a power to sell as much of the land as is worth 80,000*l.* for debt, and so is not *in fraudem creditorum*; but the pursuer ought to pursue for that provision, either by apprising or personal action.

THE LORDS found the reason relevant and proven by the tenor of the disposition; and therefore reduced, to the effect, that the pursuer might affect the said lands with all legal diligence for his debt, as if the disposition had not been granted; for they thought, seeing by this disposition there remains no estate sufficient, *ad paratam executionem*, that there was no reason to put the pursuer to insist in that clause, to restrict himself thereby to a part of the land, but that he ought to have preference for his debt, upon his diligence, affecting the whole land.

Fol. Dic. v. 1. p. 68. Stair, v. 1. p. 175.

1677. January 5.

EARL OF GLENCAIRN *against*

BRISBAINS.

FRANCIS FREELAND of that ilk, having disposed to John McNair and Robert Hamilton irredeemably; and they thereafter having disposed the same, with consent of the said Francis, to John Brisbane; and the said John having granted a reversion to the said Francis, his heirs of his own body allenary, for payment of the sum of 8000*l.* merks, and what further sums should be disbursed for improving the lands, building or repairing the houses, with annual rent free the disbursements, upon the said John Freeland, his own declaration; and that after the first term, after the said Francis, his decease.—The Earl of Glencairn, creditor to the said Francis Freeland, *alleging*, That the said reversion was granted by fraud and contrivance, and in prejudice of him and lawful creditors; and that the said reversion was granted in manner foresaid, not in favours of his debtor, but his heirs, for eluding their execution; pursued a reduction of the said disposition made in favours of Hamilton and McNair; and a declarator that Brisbane's right should fall in consequence; and that it should be lawful to him to comprise the

No 40.

A gratuitous disposition, reserving the granter's liferent, and a faculty to sell a part of the estate for payment of debt, was reduced; to the effect, that the creditor might proceed in diligence against the lands, as if the disposition had not been granted; and without regard to the faculty to sell.

No 41.

A reversion being granted in a disposition to the disponent's heirs only, himself being *operatus*; the Lords thought, that if the price were not adequate, (which was to be tried,) a reduction of the disposition, at the instance of creditors, ought to be sustained, and access allowed to them to comprise the reversion.

No 41.

faid reverſion, and to uſe an order as if it had been granted to the ſaid Francis Freeland himſelf.

THE LORDS thought, That if the price were not adequate, (which was to be tried) the concluſions aforeſaid ſhould be ſuſtained.

Reporter, *Treſaurer-depute.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 68. Dirleton, No 417. p. 204.*

* * * THE LORDS found, in this caſe, That the true value of the lands ſhould be proven, to the effect it may be known whether the price be adequate or not : And albeit the lands had not been laboured by tenants, being ſtill in the heritors hands, the value might, and ought to be proven, by the ſowing and increaſe, and the quantity of the land ; and what lands in that part, of the like quantity and quality, may be ſet for. And it was not enough, that now the Earl of Glencairn offered 2000 merks more, in reſpect the lands might have been improved ; or the ſaid offer might be made upon picque or emulation.

In this caſe the LORDS allowed a conjunct probation.

Reporter, *Hatton.*Clerk, *Hay.**Dirleton, No 431. p. 213.*

* * * See The ſame caſe as reported by Goſford, *voce* REDEMPTION.

1706. July 24.

JEAN WEEMS and DAVID WHITE, her Husband, *againſt* ANN MURRAY.

No 42.

A diſpoſition *omnium bonorum*, by a wife to her husband, bearing to be for love and favour, and for onerous cauſes, was not ſuſtained in competition with an anterior obligation for an annuity, granted by the diſponer to his aunt.

ISOBEL FORBES, daughter to the deceased Mr Arthur Forbes, being creditor to Sir Patrick Murray in 1000 merks per bond, granted an obligation to Anna and Martha Murrays, her two aunts by the mother ſide, for payment of L. 40 yearly : And thereafter having married the deceased James Hamilton, goodman of the Cannongate Tolbooth, ſhe made a diſpoſition to him *omnium bonorum*, and particularly aſſigned him to the ſaid 1000 merks bond ; but, by a poſterior diſpoſition, ſhe aſſigned to the ſaid Anna Murray her wearing cloathes. James Hamilton transferred the ſaid bond to Jean Weems, his ſecond wife, in implement of the minute of contract paſſed betwixt them *pro tanto*, who, with the concurrence of David White, her preſent husband, purſued for the ſame. Compearance is made for Anna Murray, who claimed preference to the ſum, upon this ground, That ſhe was executrix *qua creditrix* decerned to Iſobel Forbes, and had confirmed the ſame as *in bonis* of the deſunct ; whereas Jean Weem's right depended upon the validity of the diſpoſition made by Iſobel Forbes to James Hamilton, which was null and reducible upon the act of Parliament 1621, as being a diſpoſition *omnium bonorum* by a wife to her husband, in defraud of creditors.

Alleged for Jean Weems :—That Anna Murray, as executrix creditrix to Iſobel Forbes, can have no right to the ſum ; becauſe the deſunct was denuded in her