

No 455. inventory, but left the pursuer to the ordinary course of arrestment, for making furthcoming any part of the price unpaid.

Fol. Dic. v. 2. p. 253. Stair, v. 2. p. 772.

* ** Fountainhall reports this case :

THIS being likewise on the said act of Parliament 1621, *alleged*, They not being conjunct persons were not bound to instruct farther the onerous cause of their disposition than by its own narrative. *Answered*, They must condescend farther, because it bears not the simple receipt of money, but is for debts undertaken conform to an inventory. THE LORDS sustained the disposition, and found the defender was not holden to produce or instruct the said onerous cause or inventory, unless the pursuer would offer to prove by his oath, that his debt was one of the debts contained in the inventory which they were burdened to pay ; 23d June 1680, Mary Piers against John Black, vintner, (*See APPENDIX*) The warrandice of his tack would indeed import that there should be no eviction nor pretender to the property or possession of the house, that should disturb or dispossess him, but will not extend to a casual accident of a neighbour's building, which though it incumbered the entry to his house, yet did not totally obstruct it ; for if the obstruction had been total, I think the LORDS would have freed him from the duty, as they do with tenants *in prædiis rusticis* where there is a total vastation *per vim græculorum*, by thunder, &c. falling out, *sine culpa conductoris, ut D. l. 33. & 35. Locati Conducti.*

Fountainhall, MS.

1680. June 22.

SINCLAIR against DICKSON.

No 456.

In a reduction of a disposition, as being in defraud of creditors, the purchaser's heir was appointed to instruct the onerous cause of the disposition, so far as he could. The purchaser had been cousin once removed to the seller.

JOHN SINCLAIR pursues reduction of a disposition made by Dickson of Buchtrig to umquhile Mr Robert Dickson, Advocate, as being without a cause onerous, in defraud of him a lawful prior creditor. The defender *alleged*, Absolutor, because the disposition bears to be for sums of money, and causes onerous, which sufficiently instructs, not being conjunct and confident persons, Mr Robert being cousin-german only once removed to Buchtrig. It was *answered*, That the narrative here is not only for sums of money, but for other causes and considerations, which is always understood to be for love and favour, and not an adequate cause onerous, even among strangers, much more in this case, where Buchtrig had no children, and disposed his whole estate to Mr Robert, who was as near to him as any, and the only man like to preserve and increase it of his kin ; and now Mr Robert being dead, and that his oath cannot be had for instructing of the true sums paid, Mr George Dickson, as his successor, ought to instruct the narrative.

THE LORDS ordained Mr George to instruct so far as he could the cause onerous, reserving to themselves how far it should operate.

No 456.

Fol. Dic. v. 2. p. 253. Stair, v. 2. p. 773.

1694. December 19. THOMAS MERCER against WALTER DALGARDNO.

THE LORDS found that the bond being taken to the wife in liferent, the husband could not discharge it; and though it was *alleged*, that it was *donatio inter virum et uxorem*, yet the LORDS finding it quadrated exactly with the sum provided to her in her contract of marriage, though it did not relate thereto, nor bear to be in specific implement thereof, they presumed it was in satisfaction of that obligation, unless they offer to prove it was fulfilled *aliunde*.

No 457.
A step-father and a step-son are conjunct persons, consequently bound to instruct the onerous cause of deeds between them.

1695. January 16.—In this case it came to be debated, if a step-son receiving right from his step-father, was to be reputed such a conjunct person, in the terms of the act of Parliament 1621, as to be obliged to prove the onerous cause of his disposition? Though there uses to be small amity betwixt such relations, yet the LORDS thought them conjunct persons; for they could not marry, nor be witnesses nor judges for one another.

Fol. Dic. v. 2. p. 254. Fountainhall, v. 1. p. 652, & 659.

1706. January 24. WILSON against LORD SALINE.

A SECOND disposition of the same subject to a conjunct and confident person, first completed by infestment, bearing onerous causes in general, proves not its narrative against the first disponee; and a bond for a large sum of money of the same date with the disposition, but not referring to it, found no instruction of the onerous cause; for both, probably, were meant as donations; and if the first disponee was preferable, the second disponee could have it in his power to prefer himself *ex post facto*, by giving a valuable consideration, which he would do by discharging the bond.

No 458.

Fol. Dic. v. 2. p. 253.

* * This case is No 67. p. 942, *voce* BANKRUPT.

1707. December 5.

ISOBEL M'LIERIE, relict of THOMAS GLEN against JAMES GLEN Merchant in Edinburgh.

IN the reduction at the instance of Isobel M'Lierie against James Glen, for reducing his adjudication of a tenement in the Canongate belonging to the deceased Thomas Glen the pursuer's husband, upon this ground, That the

No 459.
Adjudication on a bond granted by one brother to another,