

No 10.

sums actually paid by him to the creditors: There will be sufficient after that to pay this debt.

Pleaded for the defender, The pursuer is grasping at an undue advantage: This estate was subject to a liferent to Sir Thomas, and to contingent liferents to his and Mr Gordon's ladies; if the creditors had proceeded to diligence, they could not have made so much as the composition; and therefore the agreement was made, whereby the liferenters renounced their rights, and Shawfield undertook to pay it; and it is acknowledged the view was to save something to the family: If this pursuer was not at the meeting of creditors, where this agreement was made, he at least knew of it, and did not impede the execution, so far as it has gone: If he will insist on Shawfield's obligation, he must comply with the terms of it, and accept the composition; if he waves it, then the estate is disposed to Shawfield; the debts are also conveyed to him, and he can use them to the full extent, which will exhaust the value; and the disposition is not reducible, as it is not without any true, lawful, or necessary cause; and without a just and true price; nor are the creditors lesed thereby.

Observed, That the disposition for a sum advanced, which was not true, and not for payment of debts, was without any cause, and reducible: That the estate remained affectable for Mr Gordon's debts; and might be affected by this pursuer, and also by Shawfield for the debts in his person: That when this was done, it would fall to be determined, in the competition betwixt them, whether he could charge them to the full extent, or in so far as he had paid: It was said, as he was trustee for Mr Gordon, he could only state to him what he truly paid; nor more in a competition with his creditors: But the question was not proper here.

THE LORDS, 31st January, found, That the disposition in favour of Campbell of Shawfield was reducible upon the act of Parliament 1621; and therefore reduced the same accordingly; referring to Shawfield to claim the half or whole of the debts paid by him, as accorded of the law. And on bill and answers, adhered.

Reporter, *Elchies*. Act. *Lockhart*. Alt. *H. Home*. Clerk, *Pringle*.

Fol. Dic. v. 3. p. 48. D. Falconer, v. 2. No 212. p. 254.

1754. July 6.

BROWN and Others against MURRAY.

No 11.

A sale by a bankrupt, for a full price, so far reduced as to bring in the creditors all *pari passu*.

JOHN GILLESPIE, possessed of a grass farm and a large stocking of sheep, &c. fell into labouring circumstances. He had been taken with caption, and let go upon payment. And apprehending a discovery of his circumstances, which would bring all his creditors upon him, he assigned his tack, and sold his stocking to John Murray his son-in-law, at a price which was agreed on all hands to be equal. Whether he had any view in this transaction to benefit his favourite creditors, who lived all in the neighbourhood, or whether he meant only to prevent

his effects from being carried off by poindings at an under value, is not certain; but this is certain, that the favourite creditors, most of them the bankrupt's near relations, got the start by arresting in the hands of the purchaser. ' This produced a reduction of the bargain at the instance of the other creditors; and the bargain was accordingly reduced, not as to the purchaser, but only as to the creditors, to the effect of ranking them all *pari passu* upon the price.'

This interlocutor was carried, not upon any just principle, which seems not easy to be found, but upon a natural impulse to redress a wrong, which deserved redress had there been law for it. The difficulty is, that there is no foundation, either in common or statute law, to reduce a sale made by a bankrupt for a full price. Neither did the Court take upon them to reduce the sale. On the contrary, they held the purchaser bound, and ranked the creditors upon the price. So far I could have gone, as to find that the bankrupt's relations and neighbours could take no benefit from their arrestments against the more distant creditors, when the preference of the former was probably one of the bankrupt's motives for making the bargain. But unluckily it came out in the course of the process, that nine arrestments were laid on by creditors who were not parties to the process, and who had no such connection with the bankrupt, as to admit of a supposition that he had any view to prefer them. This was a pinching circumstance, because the pursuers had not arrested, nor done any sort of diligence against the bankrupt; and the Court could find no other means to come at what was reckoned material justice, but to pronounce the above interlocutor.

Sel. Dec. No 65. p. 85.

1781. March 9.

BLAIKIE *against* ROBERTSON.

It has been found, that a voluntary disposition for a price instantly paid, and not for anterior debts, fell not under the statutes 1621 and 1696: In like manner, that voluntary securities, granted for money instantly received, were not affected by these statutes; Erskine, large Instit. b. 4. tit. 1. § 43. In this case, it appeared from a proof, that the sums for which an heritable security was granted by the bankrupt, had been advanced by a favourite creditor, through an interposed person, in order to prefer that creditor, by making payment to him of the money so advanced: The transaction being thus evidently calculated to *elude* the statutes,

THE LORDS 'reduced the security.'

Ordinary, Lord Braxfield.

Adv. Hay Campbell, Craig.

Adv. M^r Laurin, Abercrombie.

Eol. Dic. v. 3. p. 48. Fac. Col. No 51. p. 90.

Craigie.

No 11.

No 12.

A sale contrived to *elude* the statutes, by means of instant payment to interposed persons, in order to favour particular creditors, reduced.