

No 440.

ordained the same to be proved, either by writ or oath, as said is, and that no other probation ought to be admitted thereupon.

Act. *Advocatus & Cunninghame.*Alt. *Nicolson & Craig.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 250. Durie, p. 484.*

\*\* Durie reports a similar case, 22d June 1642, Nisbet against Williamson, No 23. p. 2774. *voce* COMPETITION.

No 441.

1632. *January 17.*SKENE *against* BETSON.

ONE having disposed his whole heritage to his son-in-law, upon the narrative of a price paid, whereby he was rendered bankrupt, the disposition was found probative, unless redargued by the disponent's oath.

*Fol. Dic. v. 4. p. 251. Durie.*

\*\* This case is No 25. p. 896, *voce* BANKRUPT.

No 442.

1634. *March 21.*WATSON *against* ORR.

Where the disposition bore, in general, to be for sums of money, the heir was obliged to instruct the onerous cause.

IN a process upon the passive titles against an heir convened as successor *titulo lucrativo*, the narrative of the disposition, bearing a price truly paid, was found probative, unless redargued by the defender's oath.

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

\*\* This case is No 105. p. 6767 *voce*, PASSIVE TITLE.

No 443.

1639. *March 9.*RIDDOCH *against* YOUNGER.

A right granted by a bankrupt to his son *in familia*, reduced as gratuitous, tho' it bore to be for sums of money and onerous causes, and the defender offered his oath in supplement.

ONE Riddoch reducing some dispositions made by one Younger to his son Younger, upon the reason of the act of dyvoury, as done by a bankrupt to his own son without just and true onerous causes in defraud of the pursuer, a true and just creditor; and the defender opposing his right, which bore to be made "for sums of money and onerous causes;" against which positive clause the pursuer can never be heard to allege the same to be made without payment of any sums of money, except that he should prove the same by the oath of the receiver; and the pursuer *replying*, That in this case the presumptions were so manifest for him, and for the truth of his reason, that it laid a necessity upon the defender to prove and show that he had paid sums for this right made to him, seeing it is made by the father to the son, who was a young man unmarried, remaining in house with his father, and who cannot condescend upon any

probable way, by the which he might have acquired means or monies to have acquired this right, neither can he condescend upon any person who was debtor to him in monies; and in the dispositions, the father's and mother's liferents are reserved, which all discovers a manifest fraud. THE LORDS repelled the allegiance, except the defender should qualify and prove some onerous lawful cause for the which this disposition was made, otherwise than by the confession contained in the writ or by his own oath, neither whereof the LORDS found sufficient in this case, except that beside the same the defender might make it appear that he had acquired it for true sums debursed by him, and show to whom the sums were paid, and where and by what means he had acquired these sums.

No 443.

*Fol. Dic. v. 2. p. 251. Durie, p. 882.*

\* \* A similar decision was pronounced, 12th February 1670, Napier against Gordon, No 95. p. 3755. *voce* EXECUTION.

1665. June 28.

Mr JOHN ANDERSON *against* WILLIAM MONTIETH in Orkney.

IN an improbation and reduction of a comprising of certain tenements of lands come in the person of William Montieth in Orkney, pursued against him by Mr John Anderson, who had obtained adjudication of the foresaid tenements *in anno* 1659 from Sir Harry Nisbet, as lawfully charged to enter heir to James Nisbet his father, from whom the foresaid tenements were appraised *in anno* 1619, the LORDS repelled the first reason of reduction proponed for Anderson against Montieth's comprising, viz. that the rebel, James Nisbet, could not grant a bond of borrowed money after he was denounced a rebel at Anderson's author's instance; and likewise repelled the second reason, viz. that there being three principals bound conjunctly and severally, the bond was assigned and transferred with this quality, that execution was not to pass upon the bond, but only against James Nisbet, one of the three principals, notwithstanding whereof, the comprising led upon the said bond against James Nisbet's land was sustained, and the reason repelled.

No 444.

It appears from Stair's report of this case, No 133. p. 1044. *voce* BANKRUPT, that a bond, bearing borrowed money granted to one not conjunct or confident, after the granter was rebel, was found probative of its onerous cause, against a reduction upon the first clause of act 1621.

*Fol. Dic. v. 2. p. 253. Newbyth, MS. p. 30.*

\* \* Stair's report of this case is No 133. p. 1044. *voce* BANKRUPT.

1670. July 15. Lady LUCIE HAMILTON *against* BOYD of Pitcon.

LADY LUCIE HAMILTON insists in her reduction, (*See* No 114. p. 7046. *voce* INHIBITION.) against Pitcon, on this ground, That albeit the disposition granted to him by George Hay, the common debtor, be anterior to the pursuer's inhibition, yet it must be reduced on this ground, That it is without any equiva-

No 445.

The onerous cause of a disposition between conjunct persons, found not to