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3*tio*, That he died infeft, and in poſſeſſion of an eſtate about Dumfries, worth 12,000 merks *per annum*. 4*to*, That he had a debt due to him by Hampsfield, and another by my Lord Herries, which were good debts in the year 1654, at the time of the granting the bond of proviſion, though now they be grown worſe by the creditors neglect.

THE LORDS found, That the father having diſponed the fee, it could not be looked upon as part of his eſtate. 2*do*, That the father's liferent, though by reſervation, gave him only right to uſe the wood for neceſſary uſes, and repairing of houſes, but not to ſell the ſame, unleſs the wood had been in uſe to be diſpoſed of, and divided by yearly haggs. 3*tio*, That the lands about Dumfries, which belonged to one Rome of Dalſwinton, and were appriſed from him by his own creditors, and peaceably poſſeſſed by them for many years, were not a clear and acceſſible eſtate, and ſo not to be conſidered as a part of the condeſcendence. Here there was a great preſumption that old Mouſwell's right to theſe lands was but a truſt in his perſon. 4*to*, That the debtor having been a man of conſiderable fortune when his debts were contracted, he ought not to have ſecured his younger children's proviſions upon his lands, by a reſervation in the eldeſt ſon's infeftment of fee, and left his creditors to ſeek after moveable debts due to him, moſt part whereof are now deſperate, without any neglect of the creditors, who having only the benefit of a clauſe of relief as cautioners, could not do diligence againſt any part of the debtor's eſtate, till they were diſtreſſed ſeveral years after his deceaſe; beſides, ſome of theſe debts are confirmed by the children in their father's teſtament, and uplifted; and theſe bonds not being a viſible and acceſſible eſtate, the Lords preferred the creditors, and reduced the children's right, in ſo far as it did prejudge anterior creditors. *See* PROCESS. *See* REDUCTION of DECREETS.

Harcarſe, (DECREETS.) *No* 402. *p.* 107.

SECT. VIII.

Of Second Gratuitous Alienations of the ſame Subject.

1662. *July* 23. LORD FRAZER *againſt* PHILLORTH.

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A firſt diſpoſition with laſt infeftment, for onerous cauſes, preferred to a ſecond diſpo-

IN the declarator of property of the barony of Cairnbulg, at the inſtance of the Lord Frazer, againſt the Laird of Phillorth *, it was *alleged* for the defender abſolvitor, becauſe the purſuer's father and grandfather's infeftment is upon the reſignation of Frazer of Doors, *ita eſt*, Frazer of Doors had no real right in his perſon, never having been ſeaſed, at leaſt there is certification granted againſt Doors's laſine, in the improbation at the inſtance of the defender,

* Stair, v. 1. p. 128. *vide* JUS TERTII.

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fition of the ſame ſubject, gratuitous, with firſt infeftment.

againſt the purſuer and his father; ſo that Doors having no real right, his diſpoſition, inſtrument of reſignation, and charter granted by the king, flowing upon the reſignation of the Laird of Phillorth and the Lord Lovit, who had right to Pitfligo's appriſing, of the haill eſtate of Phillorth, can give no right to declare the property, eſpecially againſt the defenders, who hath a real right by infeftment, flowing from Phillorth his goodſire by reſignation, and flowing from the Lord Lovit, which albeit poſterior, yet having the firſt infeftment, is the firſt and only right. The purſuer *answered*, The defence ought to be repelled, becauſe any right the defender hath is from his own grandfather, to whom he was *alioqui ſucceſſurus*; and thereby the defender is ſucceſſor *titulo lucrativo* to his grandfather, the common author, after the diſpoſition granted to Doors, and as umquhil Phillorth, Door's author, *personali objectione* would be excluded from oppoſing Door's right of property; which right he had diſponed to Doors, and was obliged to warrant; no more can the defender, (who by this ſame right he defends, being ſucceſſor lucrative to his grandfather), be heard to exclude the purſuer, who is ſucceſſor to Doors. 2*dly*, Albeit there be no ſaſine, yet umquhil Phillorth and Lovit were fully denuded in favours of Doors, by the reſignation made in the king's hands, and charter conform, after which any right granted to them by this defender, is a *non habente potestatem*. 3*dly*, Any right the defender hath flowing from the Lord Lovit cannot defend him, becauſe it was but an appriſing againſt Phillorth the common author; and it is offered to be proven that the appriſing was ſatisfied within the legal, in ſo far as the lands of Innernorth were diſponed by Phillorth and Lovit jointly, to Frazer of Doors for 20,000 merks, and the lands of Innerallothy were diſponed by them to Lovit's own ſons irredeemable, the price of which lands being 54,000 merks, was the ſum appointed for ſatisfaction of the appriſing betwixt the ſaids parties, and ſo as to the lands of Cairnbulg, and remnant lands appriſed, the appriſing is extinct. The defender *answered* to the firſt, That he is not ſucceſſor *titulo lucrativo* to his goodſire, becauſe the time of the diſpoſition by his goodſire to him, and alſo the time of his goodſire's death, his father was alive, and ſerved heir to his goodſire. 2*dly*, There was no right in his goodſire when he diſponed; but all the right was in the Lord Lovit by Pitfligo's appriſing; neither was Lovit denuded by the reſignation or charter without ſaſine, ſo but that the ſecond reſignation with the firſt infeftment is preferable. 3*dly*, Satisfaction of the appriſing, as it is *alleged*, is not relevant, unleſs it be by intromiſſion with the mails and duties of the lands appriſed, conform to the act of Parliament 1621, but no other payment, or ſatisfaction by the debtor, is ſufficient to take away an infeftment, *contra singularem successurum*.

THE LORDS repelled the defence, founded upon Lovit's appriſing, in reſpect of the reply of ſatisfaction thereof; and found no neceſſity to allege that the perſon having right to the appriſing was otherways denuded, than by acknowledgement of payment or ſatisfaction, and that there needed no formal grant of redemption or renunciation, regiſtrate conform to the act of Parliament anent the regiſtration of ſaſines, reverſions, &c. which the LORDS found only to extend to wadſets,

No 62. properly ſo called, and not to appriſings; neither yet to an infeftment for relief, whereunto the rents were not to be only for the annualrent of the ſum, but to ſatisfy the principal; and, therefore, ſeeing the LORDS found that the only right was in the defender's grandfather, and that he diſponed to the defender; that he could be in no better caſe than his grandfather, as to the diſpoſition granted by his grandfather without a cauſe onerous, being after the diſpoſition of the ſame lands, by that ſame grandfather to the purſuer's author; but found it not neceſſary to determine the caſe of lucrative ſucceſſor, as it was here ſtated to make the ſucceſſor liable to his predeceſſor's debts. *See* PERSONAL and REAL. *See* REGISTRATION.

Fol. Dic. v. 1. *p.* 70. *Stair, v.* 1. *p.* 133.

No 63.
A cedent found not entitled, after granting aſſignation, to diſcharge the debt gratuitouſly, though before intimation.

1671. *February* 3. BLAIR of Bagillo *againſt* BLAIR of Denhead.

BLAIR of Bagillo having granted bond to Blair of Denhead, he did aſſign the ſame to Guthrie of Colliſtoun. Bagillo raiſed ſuſpenſion againſt Colliſtoun as aſſignee, *in anno* 1632, and now Colliſtoun inſiſts in a transferring of the old ſuſpenſion and decreet ſuſpended againſt Bagillo's heirs, to the effect the cautioner in the ſuſpenſion may be reached. It was *alleged*, no transference, becauſe Bagillo's father obtained a general diſcharge from Denhead, before any intimation upon Colliſtoun's aſſignation; and albeit the diſcharge be poſterior to the aſſignation produced, it muſt liberate the debtor, who was not obliged to know the aſſignee before intimation. It was *answered*, that the debtor might pay to the cedent *bona fide*, before intimation; yet a diſcharge obtained from the cedent, after aſſignation, would not liberate againſt the aſſignee, though it were before intimation; and this general diſcharge bears no onerous cauſe. *2dly*, This general diſcharge being only of all proceſſes and debts betwixt Bagillo and Denhead, at that time, it cannot extend to this ſum aſſigned by Denhead long before, and who could not know whether the aſſignee had intimate or not; and cannot be thought contrary the warrandice of his own aſſignation, to have diſcharged the ſum aſſigned; eſpecially ſeeing there was an aſſignation long before, which was loſt, and the intimation thereof yet remains; and this ſecond aſſignation bears to have been made in reſpect of the loſs of the former, and yet it is alſo before this general diſcharge.

THE LORDS found the general diſcharge of the cedent could not take away this ſum, formerly aſſigned to him, though not intimate, unleſs it were proven that payment or ſatisfaction was truly made for this ſum.

Fol. Dic. v. 1. *p.* 70. *Stair, v.* 1. *p.* 714.

No 64.
A ſecond aſſignation was not intimated; yet found

1675. *July* 15. ALEXANDER *againſt* LUNDIES.

ANNA LUNDIE granted an aſſignation of 3000 merks to Anna Alexander her neice, being a part of the bond of 4000 merks belonging to her; and thereafter ſhe granted an aſſignation to three ſiſters Lundies, alſo her relations, who made