

S E C T. XV.

Bankruptcy, how Proponable.

1663. *June 19.* GEORGE REID *against* THOMAS HARPER.

THESE parties competing in a double poinding, George Reid craved preference because he was assigned to the mails and duties by Thomas Mudie, heritor of the land.—Thomas Harper *alleged*, That he had arrested the duties upon a debt owing to him by William Mudie, father to the said Thomas, and any right Thomas had was fraudulent and null by exception, by the express words of the act of Parliament 1621, being betwixt father and son, without any onerous cause, and he ought not to be put to reduce *in re minima*, his debt being within L. 100.

THE LORDS found he behoved to reduce, conform to their constant custom in heritable rights.

Fol. Dic. v. 1. p. 172. Stair, v. 1. p. 192.

No 65.
A right by infestment, granted contrary to the act of Parliament 1621, cannot be challenged by exception, but by reduction.

1664. *July 22.* LORD LOURE *against* LADY CRAIG.

LORD LOURE being infest in the estate of Craig, pursues for mails and duties. Compearance is made for the Lady Craig, liferenter, who *alleges* she stands infest, and in possession of the lands.—The pursuer *answered*, That any infestment, as to that part thereof that was not for fulfilling of the contract of marriage, was fraudulent, and in prejudice of lawful creditors, and so null by exception, conform to the act of Parliament 1621.—It was *answered* for the Lady, They opposed the Lords' daily practice ever since the said act, that infestments were never taken away thereupon by exception or reply.

Which the LORDS found relevant.

Fol. Dic. v. 1. p. 172. Stair, v. 1. p. 222.

No 66.
Found as above.

1669. *January 5.* ISOBEL and MARGARET SIMES *against* MARION BROWN.

By contract of marriage betwixt umquhile Thomas Sime and Marion Brown, John Flowan, Marion's master, is obliged to pay 300 merks of tocher, and Thomas Sime is obliged to employ the said 300 merks, and 200 merks further for the said Marion, her liferent use. The said Thomas having two daughters,

No 67.
Though deeds, done in defraud of creditors, against the act 1621, re-

No 67.
 gularly need
 reduction,
 yet in a per-
 sonal right,
 the matter
 depending
 before the
 Lords, and
 the parties
 poor, such
 a deed was
 found simply
 null.

Isobel and Margaret Simes, he lends a sum of 400 merks to Thomas Brown, and takes the bond on these terms, to be paid to him and the said Marion Brown, the longest liver of them two in liferent, and after their decease, to Margaret and Isobel Simes. The said Isobel and Margaret having pursued the said Marion before the Commissaries, for delivery of this bond, as belonging to them after their father's death, the Commissaries assoilzied the said Marion from delivery of the bond, and found it did belong to the said Marion herself, not only as to the annualrent, but as to the stock, because her husband having no other means but this bond, and not having fulfilled her contract, she had confirmed herself executrix creditrix in this sum, and behoved to exclude her husband's two daughters of a former marriage, who were provided, and foris-familiate before. Of this absolvitor the daughters raised a reduction on this reason, That this sum could not be confirmed, not being *in bonis defuncti*, the father being but liferenter, and the daughters fiars, and though they were but as heirs substitute, they exclude executors, and need no confirmation; *2dly*, The husband being but obliged to employ this tocher, and 200 merks more, the pursuer must instruct that the tocher was paid; *3dly*, The wife intromitted with as much of her husband's goods as would satisfy her provision.—It was *answered*, That the wife not being obliged for her tocher, but another party who was *solvendo*, and neither being obliged, nor in capacity to pursue, therefore could not now, after so long a time, be put to prove that the tocher was paid; and for her intromission she had confirmed and made faith, and the pursuers might take a dative *ad omissa*, if they pleased, but could not, *hoc ordine*, reduce or stop her decret upon compearance.

THE LORDS found, That albeit in form the bond should have been reduced, as being done *in fraudem* of the wife, as being a creditor, and thereafter confirmed; yet now the matter being before the Lords, and the parties poor, they found the husband's substitution of two provided daughters by a former marriage null, as to the wife's provision, by the act of Parliament 1621, without necessity of reduction, the matter being but a personal right; and found the wife not obliged to instruct the tocher paid; and therefore assoilzied from the reduction, but prejudice to the pursuers to confirm, a dative *ad omissa*.

Fol. Dic. v. 1. p. 172. Stair, v. 1. p. 577.

No 68.

A disposition
 to a conjunct
 and confident
 person, a-
 gainst the
 act of Parlia-
 ment 1621,
 was found
 null by excep-
 tion, it being

1671. July 16.

BOWERS against COWPER.

BOWERS pursues the Lady Cowper, as vitious intromitter with the Lord Cowper's goods and gear, for payment of a debt of his; who *alleged* absolvitor, because she had a disposition from her husband of his moveables.—It was *replied*, That the disposition being between two most conjunct persons, without a cause onerous, was null by exception by the act of Parliament 1621, against fraudulent dispositions.—It was *answered*, That the disposition behoved at least to purge