

1673. July 5.

HUME against SMITH.

MARGARET HUME pursues a reduction of a disposition granted by Robert Sinclair, of certain tenements to Katharine Smith, his wife's sister, as being betwixt conjunct and confident persons, without an onerous cause in prejudice of her, who is Sinclair's creditor; for albeit the disposition bore sums of money, yet the narrative did not prove betwixt conjunct persons, unless it were otherwise instructed. —It was *answered* for the defender, That law hath never interpret a wife's sister to be a confident person, meant by the act of Parliament, which hath been extended to father and son, and brother and brother, but never to a wife's sister. —It was *replied*, That it was extended to a good-brother in the case of Birnie *contra* —

No 27.
A wife's sister is considered to be a confident person.

THE LORDS, before answer, ordained the defender to condescend upon the onerous cause of the disposition, and to adduce such evidences therefor as she could: And she adduced one witness, who deponed that he was witness to a bond of 350 merks, due by Sinclair to Smith, and that he heard Sinclair acknowledge that he was due to her 700 merks.

THE LORDS found this a sufficient adminicle to astruck the cause onerous of the disposition *pro tanto*, the defender giving her oath upon the verity thereof, and declared the lands redeemable from her thereupon.

Stair, v. 2. p. 204.

1673. July 23.

CREDITORS of TARPERSIE against KINFAWNS.

THE LORDS, upon debate among themselves, were of the opinion, that a confident person having got a disposition from a debtor, might, at the debtor's desire, satisfy such creditors as he thought fit, there being no diligence done by other creditors: And, as the debtor might have done so himself, so the trustee may do: And that it is provided so by the act of Parliament 1621.

They found that the trustee, if he got any ease by composition, should apply the benefit thereof, for satisfaction of the other creditors.

Item. That he cannot make voluntary payment in prejudice of a creditor who has done diligence.

Clerk, Gibson.

Fol. Dic. v. 1. p. 67. Dirleton, No 174. p. 70.

No 28.
A confident person, getting a disposition from a debtor, might, as trustee for the debtor, prefer at pleasure creditors who had done no diligence.