

No 62.

properly so called, and not to apprisings; neither yet to an infestment 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 disposed 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. I. p. 70. Stair, v. I. 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 decret 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 warrantice 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. I. p. 70. Stair, v. I. p. 714.

1675. July 15.

ALEXANDER against LUNDIES.

No 64.

A second assignation was not intimate; yet found

ANNA LUNDIE granted an assignation of 3000 merks to Anna Alexander her niece, 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

the first intimation. There are mutual reductions raised by both parties of these assignations, wherein it was *alleged*, for Anna Alexander the first assignee, that the posterior assignation ought to be reduced, *1st*, Because the cedent, when she granted the same, was in a present expectation of death, and was not *compos mentis*, and having recovered, she disclaims the same, and hath confirmed her assignation to Anna Alexander, and concurs with her. *2^{dly}*, The posterior assignation ought to be reduced, as being fraudulent and null, contrary to the act of Parliament against double assignations and dispositions, and contrary to the act of Parliament 1621, against bankrupts; for the first assignation being granted, it imports a warrandice from the cedent's own voluntary deed, though it were not express, and the first assignee is creditor as to that warrandice, and thereupon may reduce any posterior assignation, without cause onerous, as being in prejudice and defraud of that warrandice. *Ita est*, This posterior assignation bears expressly for love and favour. It was *answered* for the posterior assignees, That they repeated the reasons of reduction, viz. that albeit their assignation was posterior, yet it was the more preferable right, because it was first intimate; and albeit a prior assignation for onerous causes might be a ground to reduce a posterior, yet where there are two rights, both gratuitous, that which is first compleat is preferable, and can never be reduced upon a prior gratuitous right incomplete; and albeit this prior assignation bear causes onerous, yet being granted betwixt aunt and niece, it is not instructed by its own narrative, but must be proven.

THE LORDS found the first reason relevant upon the incapacity of the cedent, to be proven by the physicians, and other witnesses above exception that were present; they found also, that though the posterior assignation, first intimate, was the preferable right, so long as it stood, yet it was reducible upon the first assignation, and the warrandice express, or implied therein, unless the posterior assignation had been for onerous causes.

Fol. Dic. v. 1. p. 69. Stair, v. 2. p. 347.

1695. December 11.

BLAIR *against* AUSTIN.

PHESDO reported Alexander Blair of Corbs, &c. against Thomas Austin and the Hospital of Perth. Agnes Blair, by her contract with Austin, had power at her death to dispone, legate, or assign 1200 merks, as she pleased. In her *liege poustie*, she assigns it to Alexander Blair, and others, reserving the power of 100 merks for her funerals. Afterwards, on her death-bed, she makes a second right of this to Austin, her husband's children, and 200 merks of it to the poor of the hospital of Perth. The two assignees competing, it was objected for the second, that the faculty reserved to her bore a power to dispose at her death, as their's was.—THE LORDS repelled this, as importing a power any time before her death. Then *alleged*, It was but of the nature of a legacy, because it bore the word

No 64.

reducible upon the act 1621; the first assignation being considered to be an anterior debt, by the warrandice contained in it. Both assignations were lucrative and gratuitous.

No 65.

Found in conformity with Alexander against Lundie, *supra*.