

No 116.

tal, or price, but allowed either party to adduce witnesses what the land was worth, and might pay as at a constant rent, and what it was worth in buying and selling in that place of the country. See No 41. p. 911.

*Stair, v. 2. p. 494.*

1679. December 23.

GORDON against FERGUSON.

No 117.

A conveyance from a conjunct person to a singular successor, who could not plead *bona fides*, sustained only to the extent of the sums actually paid.

GORDON of Troquhen pursues a reduction of an infeftment granted by Cannon of Blackmark to Cannon of Marrogat, his brother, bearing, for undertaking all his debts, and for love and favour; and of a disposition granted by Marrogat to Ferguson of Keiroch; the reason of reduction was upon the act of Parliament 1621. The defender *alleged* absolvitor, because he was no conjunct person, nor partaker of the fraud betwixt the two brothers, but paid a competent price; and by the foresaid act, third parties not partaking in the fraud are secure.—The pursuer *answered*, That Ferguson was necessarily partaker of the fraud, it being in the body of his author's right, that albeit it bore *for undertaking the disponent's debt*, yet there was only 600l. mentioned in a blank, which is scored, and which could not be an adequate price.—THE LORDS found, That Ferguson could not be free of the participation of the fraud in his author's right.—It was further *alleged* by Ferguson, That the sum expressed in Blackmark's disposition to his brother, was due to him, and therefore he might lawfully take a disposition from Blackmark, or from Marrogat his brother, which behoved to be effectual, as to his own sum, which was Blackmark's anterior debt.

THE LORDS sustained the disposition, in so far as concerned Ferguson's own sum due by Blackmark, but declared the right might be affected by the pursuer *quoad reliquum*, that he might redeem upon payment of Ferguson's sum, unless it were proven that Blackmark was a notour bankrupt, when he disposed to his brother; and so could not dispoise to one creditor in prejudice of another.

*Stair, v. 2. p. 726.*

No 118.

A disposition by a man to his brother-in-law was found null, unless the cause onerous were instructed; and in a reduction against an onerous purchaser from the brother-in-law, the

1680. January 24.

CRAWFORD against KER.

ANDREW CRAWFORD having apprised some tenements in Glasgow from Mungo Matthie, pursues the tenants for their duties. Compearance is made for James Ker, who produceth an anterior disposition by Mungo Matthie to James Wilson, and by James Wilson to Ker, with infeftment conform, and *alleged* that he had the prior and better right.—The pursuer *answered*, That the right by Matthie the common author did bear Wilson to be Matthie's good-brother, so that the narrative in the disposition proves not the onerous cause; and therefore law esteems it as a gratuitous deed between conjunct persons, and so is null by the act of Parliament 1621.—It was *replied* for Ker, That by that same act of Parliament, rights