

No 451. 1676. *January 19.* STANFIELD *against* BROWN.

A LIFEERENT infestment of his whole estate, granted by a bankrupt to his wife during the marriage, bearing, "in satisfaction of an anterior contract of marriage, which the husband had cancelled," was not found probative of its onerous cause; and therefore reducible in so far as exorbitant.

*Fol. Dic. v. 2. p. 252. Stair.*

\*\*\* This case is No 73. p. 954. *voce* BANKRUPT.

No 452. 1676. *December 20.* VEITCH *against* PALLAT.

A BOND granted after horning, bearing to be for the price of wines, was not found probative of its onerous cause against the donatar of escheat, though it did not appear, that the creditor was a conjunct and confident person; but he was allowed to instruct the onerous cause, by the rebel's count-book and books of entry, he being a merchant; and the LORDS refused to sustain a proof simply by witnesses, without such adminicles in writ.

*Fol. Dic. v. 2. p. 254. Dirleton.*

\*\*\* This case is No 266. p. 11601. *voce* PRESUMPTION.

1697. *January 13.* CRANSTON *against* KYLE.

No 453.

A donatar of escheat was not excluded by a discharge granted by the rebel when he was incarcerated.

CRANSTON, as donatar to the escheat of umquhile James Kyle, pursues Thomas Kyle as his debtor, who *alleged*, Absolvitor, because he had paid his brother before the gift of declarator. It was *answered* by the pursuer, *Non relevat*, because, by the discharge, it appears to have been given when the rebel was incarcerated, which put the defender *in mala fide* to pay, knowing he behoved to be denounced before caption; *2do*, A discharge by a rebel doth not instruct true payment, but it must be otherwise instructed, conform to the act of Parliament against collusions betwixt rebels and their debtors.

THE LORDS refused to sustain the discharge, unless it were adminiculated by instructions, that it was truly paid.

*Fol. Dic. v. 2. p. 254. Stair, v. 2. p. 672.*

\*\*\* Fountainhall reports this case:

THE LORDS shunned to decide how far the debtor of a rebel was *in tuto* to pay to him before the escheat was gifted, or the declarator intented, which is a great concernment, especially where he knows he is at the horn. It is like

they would sustain the payment not exceeding an aliment, as it uses to be modified to prisoners for debt, which the donatar would be obliged to furnish him.  
*Fountainhall, MS.*

No 453

1679. December 6. JOHN SINCLAIR *against* GEORGE DICKSON.

No 454

IN a reduction upon the act of Parliament 1621, the LORDS found a cousin-german was not a conjunct person, so as to oblige him to prove the onerous cause of his disposition, otherwise than by his own narrative. THE LORDS thought an apparent heir of tailzie and provision, by accepting a disposition, may be liable as well as *successor titulo lucrativo post contractum debitum*, but it was not decided, and it deserves consideration.

*Fol. Dic. v. 2. p. 254. Fountainhall, MS.*

1680. June 22. TROTTER *against* HUME.

No 455

ROBERT TROTTER pursues a reduction of a disposition granted by George Hume in favour of umquhile Major Hume, as being in defraud of him a lawful creditor, without a cause onerous; for though it bear, for sums of money paid and undertaken, conform to an inventory, yet *non constat* that the sums undertaken were paid, or that they were just and resting debts; so that it is not an equivalent cause onerous, till the inventory be produced, and the debts to be instructed to be true debts, and paid by the buyer. It was *answered*, That the narratives of dispositions need no further instruction, when the buyer is a stranger, and no conjunct or confident person, unless the contrary be proved by writ, or the defender's oath; for it is ordinary for buyers to undertake debts as a part of the price, and to retire the principal bonds to the seller, and never conceive themselves obliged to keep inventories, or instructions, which are sufficiently instructed by the narrative of the disposition; nor are they obliged to debate, whether the debts they paid by the seller's order were due or not, but as they might pay the price to the seller, so they might to any to whom he ordered payment, without inquiring the cause. It was *replied*, That the inventory and instructions ought at least to be instructed so far as extant, because if the debts undertaken be not paid, the pursuer may arrest, and in the inventory the pursuer's debt may be comprehended.

Fraud against creditors not inferred by a disposition of lands for debts.

THE LORDS found the narrative of the disposition of undertaking the debts, did instruct the cause onerous, the buyer not being a conjunct or confident person, and would not oblige the buyer's heirs to produce the inventory, or the instructions thereof, even so far as extant, unless it were offered to be proved thereby, that the pursuer's debts were a part of the price contained in the