After Andrew's death, Elisabeth his heir-apparent objecting to the settlement as not fairly obtained, there ensued a transaction betwixt her and Ogilvie, in which, for a valuable consideration, she ratified the settlement. After her death, her son the next heir of line brought a formal reduction of the settlement, upon the head of fraud and circumvention. This process was spun out to a great length, by a multitude of points and circumstances, which deserve not to be recorded. The cause purified of its dross resolved at last into the following point, What should be the effect of Elisabeth's ratification? It is effectual to exclude Elisabeth herself; but is it also effectual to exclude Andrew's other heirs insisting in a reduction of the settlement after Elisabeth's death, though they do not represent her?

No 55.

It occurred at advising, that if the reduction had been brought before Ogilvie was infeft, the pursuer could have no title without being served heir in special to the land, remaining still *in hæreditate jacente* of Andrew. But that Ogilvie's infeftment, which *funditus* denuded Andrew of the property, made the case very different. In this case, Elisabeth was entitled in her own right to challenge the settlement, which will thus appear. A naked disponee, who has obtained his right by fraud and circumvention, is bound to repair the hurt he has done; and to that end, a simple renunciation will not avail where the disponee stands infeft. And therefore he must, in order for reparation, re-convey the estate to the disponer; and if the disponer be dead, he must convey it to his heir. This entitles the heir to demand restitution of the estate. It entitles him also, if the fraud and circumvention be controverted, to bring a process, or to make a transaction as *de re dubia*. If the estate be restored to him, he may dispose of it at his pleasure; and for the same reason, if he agree for a valuable consideration to ratify the purchaser's right, this ratification must stand good against all the world.

"The ratification was accordingly sustained to bar the action."

Sel. Dec. No 175. *p.* 238.

1768. *March* 10. DOUGLAS *against* ELPHINSTON.

No 56.

A PETITION and complaint being given in to the Court of Session, stating various objections to the qualification of one who had been enrolled as a freeholder, the Court sustained one of the objections which regarded the division of the valuation of the lands; and found, That the freeholders had done wrong in admitting the person to the roll; and found it unnecessary to determine the other objection. This judgment being reversed on appeal, and the freeholder restored to his place on the roll, a petition was given in to the Court of Session, praying the Court to resume the consideration of the other objections which had been formerly stated, but had received no judgment. It was *answered*,

No 56.

That the Court had formerly pronounced a judgment exhausting the whole cause, and decree thereon had been extracted; so that there was no depending process; the cause was out of Court; and it was incompetent to resume the consideration of any of the other objections. The Lords refused the desire of the petition.

Fol. Dic. v. 2. p. 236. Fac Col.

*** This case is No 53. p. 8649, *voce* Member of Parliament.

1789. *July* 30.

Trustees of Robert Ker *against* Creditors of Mainsneil.

No 57.

An informal adjudication had been sustained as a security. In a future ranking, the creditors repeated the objections formerly judged of. Found that the adjudication was to be sustained, only the competition with creditors whose debts had been contracted after the original agreement.

In an action brought by the proprietor of the lands of Mainsneil, for setting aside an adjudication which had been led by the predecessor of Robert Ker, it was determined that the adjudication was informal and inept. But as it was not disputed that the sums for which the adjudication had been led were truly due, the Lord Ordinary, on 17th January 1784, and afterwards the whole Lords, found, that, in the circumstances of the case, the adjudication was to subsist as a security for the principal sums and interest, without accumulations or penalties.

Afterwards the proprietor having contracted debts to a great amount, the lands were sold judicially. In the ranking which ensued, the Creditors objected to Robert Ker's adjudication on the same grounds which had been formerly urged.——In answer to these objections, the Trustees of Robert Ker, he himself being at the time abroad,

Pleaded; By the judgment of the Court, pronounced *in foro contentioso,* it has been found, that the decreet of adjudication was to a certain extent a good and effectual step of diligence. This is a *res judicata,* which neither the common debtor, nor those coming in his right, can afterwards call in question. It would indeed be extremely unreasonable if a contrary decision were to be given; as in this manner, by a very natural reliance on the judgment of a Supreme Court, a party might be entirely precluded from the most just claim. Had it been found that the adjudication was ineffectual, the creditor might of new have used the proper methods of attaching the lands. This reasoning at least must be quite decisive in a question with those who became creditors after the adjudication had been sustained by the Court.

Answered; The rule, *quod res judicata pro veritate habetur,* only takes place where the parties are the same. The judgment, therefore, pronounced in the question between the common debtor and the adjudger cannot here have any influence. It is also evident, that the *ratio decidendi* in the former litigation, resting on the circumstances of the case, is quite inapplicable to the present