which the ſon made voluntary payment to ſeveral other creditors out of the price; and it being found, upon probation led, that the price contained in the diſpoſition was adequate, the purſuer inſiſted for payment of the debt out of the price.

*Alleged* for the defender: That there being no inhibition, or legal diligence againſt his father, at the purſuer's inſtance, he might pay ſuch creditors as he thought fit.

*Answered:* As the father being bankrupt, could not prefer and gratify one creditor in prejudice of another's diligence; no more could the defender, his ſon, make any ſuch voluntary payments after the raiſing of the purſuer's reduction, nor could he have the benefit of abatements given by the creditors.

THE LORDS found the purſuer's anſwer relevant; but found, That the defender might pay, after the reduction, any debt he had undertaken to pay before.

No 32.
ſon. A creditor of the father raiſed a reduction. After citation, the ſon made voluntary payments to others. The price was adequate; but the father being bankrupt, the ſon found entitled only to prefer ſuch creditors as he had undertaken to pay, prior to the reduction.

*February* 1683.—GRANT having inſiſted that the defender ſhould compt for 7000 merks, as the price of lands contained in the diſpoſition, and value of the lands being proven not to exceed 6000 merks;

THE LORDS found, That the defender, as a conjunct perſon, needed to hold compt for that ſum only, and *quoad ultra* was in the place of a ſtranger, the diſpoſition bearing the receipt of the whole 7000 merks.

*Harcarſe*, (ALIENATION.) *No* 131. & 133. *p.* 26. & 27.

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1694. *July* 20. SCRYMZEOR of Kirkton *againſt* LYON of Bridgeton.

No 34.
A diſpoſition by a perſon inſolvent, but againſt whom no diligence had been done, in favour of near relations, reduced.

SCRYMZEOR of Kirkton *contra* Lyon of Bridgeton, for reduction of a diſpoſition made by James Lyon, when he was *in meditatione fugæ*, to Moriſon his nephew, for implement to his wife of her matrimonial proviſion in the firſt place, and for payment of a tocher due by him to his ſon-in-law with his daughter in the ſecond, and to Moriſon himſelf in the third place, and to his creditors *ultimo loco*.—*Alleged*, It was not reducible, ſeeing he was not then under legal diligence at his creditor's inſtance, neither had he fled, but retired ſome days after; ſo this cauſe neither quadrated with Lanton's and Sir Thomas Moncrieff's, (p. 884.) nor with Clackmannan's Creditors' debate with Miln of Carridden. And as to his preferring his wife and daughters, this was no partial gratification nor preference, he not being then a legal bankrupt, and they being creditors by anterior obligements.—THE LORDS reſolved to hear this cauſe in preſence.

1696. *January* 28.

HALCRAIG reported Scrymzeor of Kirkton *contra* Lyon of Bridgeton, and others, mentioned 20th July 1694, for reducing a diſpoſition granted by James Lyon,

No 33. merchant in Dundee, in favours of his nephew, ſon-in-law, and other relations, as in defraud of his lawful creditors. *Alleged*, He was not notourly bankrupt nor inſolvent at the time of his granting this diſpoſition, ſeeing he had neither retired, nor were there diligences by horning, &c. againſt him; and ſo he fell under none of the heads of the act of Parliament 1621, for though it was to conjunct perſons, yet they offered to prove the antecedent onerous cauſes by their contracts of marriage, &c. and he did not gratify and prefer one creditor to the prejudice of another's diligence, for there was no diligence then againſt him. *Answered*, That excellent ſtatute obviated the frauds then diſcovered; but the *actio Pauliana, et de dolo malo* in the common law were much larger; and this was as plain and palpable a fraud as any; the man was *obæratus*, and reſolving to fly immediately, prefers all his nearer relations, and ranks his true and onerous creditors in the laſt place; but if the order in which he places them ſtand, all is exhauſted, *usque ad peram* before the creditors get a ſixpence; and ſo here is fraud both *in conſilio et eventu*; and the LORDS have oft proceeded on the grounds of the common law, as in the famous caſe of Street and Jackſon againſt Maſon, (*infra h. t.*;) and Reid againſt Daldilling, 4th December 1673, Stair, v. 2. p. 234. *voce* FRAUD. ——THE LORDS found the diſpoſition fraudulent, and reduced it. There was a ſeparate allegeance, that one of them ranked in the diſpoſition was no conjunct perſon but a ſtranger, and ſo *utile per inutile non vitiatur*; the diſpoſition muſt ſubſiſt *quoad* his ſum. This was not decided.

*Fol. Dic. v.* 1. *p* 67. *Fountainhall, v.* 1. *p.* 635. & 705.

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1749. *January* 18.

BLACKWOOD of Pittreavie *againſt* The other CREDITORS of SIR GEORGE HAMILTON.

No 34.
The narrative of a deed *inter conjunctas* requires no aſtruction, after a long lapſe of time.

IN the reduction at Mr Blackwood's inſtance of the decree of ranking of the creditors of Sir George Hamilton, the grounds whereof, *Vide* 4th January 1749, *voce* Proceſs; it was *inter alia* found, 'That a bond of relief *inter conjunctas* not 'having been objected to till after forty-five years from the date, the uſer of it 'was not, after ſo long time, bound to bring any other aſtruction of the onerous 'cauſe than the narrative of the deed.'

The like is obſerved by Fountainhall to have been found, 23d December 1692, Spence againſt the Creditors of Dick, (*infra h. t.*) where it was above forty years, and that not upon the ſcore of preſcription, there being ſome traces of interruption, but, becauſe after ſo long time the objection was incompetent; and the like where it was fifty-eight years, 2d February 1711, Guthrie againſt Gordon, Forbes, p. 492. (*infra h. t.*)

*Fol. Dic. v.* 3. *p.* 49. *Kilkerran*, (BANKRUPT.) *No* 10. *p* 56.