

the beginning. Moreover, the objection, if good, would go too far; for, if insolvency on the part of the husband could presume fraud, and totally void the contract, so must it do if it occurred on the part of the wife's father, or the provider of the portion. The consequence of this would be, that all provisions in marriage-contracts would be thrown loose. A husband could not be sure of the portion, a wife of her jointure, or children of their provisions; and these were the grounds of the decision in the case of Carfin, though a proof was there at first allowed before answer.

THE LORDS repelled the defence founded on the allegation, that the said Patrick Lindsay, at the date of the contract of marriage, was *obærat* and bankrupt, and so not able to have implemented his part of the contract; and that in respect of the death of the wife, and of there being no issue of the of the marriage existing; and refused to allow a proof of Mr Lindsay's circumstances.

Act. Dav. Raz.

Alt. Lockhart.

D. R.

Fol. Dic. v. 3. p. 244. Fac. Col. No 132. p. 243.

SECT. III.

Underhand dealing.

1629. November 27. PATERSON *against* EDWARD.

JOHN M'CUBBIE being debtor to divers of his creditors, for satisfying of debts owing to Nicol Edward, Mr Robert Balcanquhel, and others, he makes them a disposition of the merchant-wares which he had in his merchant-booth, valued to a sum exprest in the disposition, whereby also all other his goods are disponed to them for their relief; and about 20 days after the said disposition, he on the night delivers the saids goods in the merchant-booth, and on the morrow becomes fugitive; and on that morrow Thomas Paterson arrests the same wares in the said Nicol Edward's hands, and pursues to make them furthcoming; and they defending them with the said disposition, and tradition before the arrestment, as being done for an onerous cause, for a true and just debt, which they instructed, the LORDS found that they had right, and not the arrester to the said goods, in respect of the said disposition, and delivery to them, all done before the arrestment, and done to a true creditor, for a just and preceding

No 15.

No 16.

A merchant disponed his effects to certain creditors, and the day after delivery he left the country. In a competition between the disponees and other creditors, who had arrested on the day the bankrupt fled, the former were preferred, though the disponees were relations of the bankrupt.

No 16.

debt, which was greater than the goods delivered in price and value extended to; neither was it respected where the pursuer replied that it was a disposition *omnium bonorum*, done to a conjunct person betwixt a brother-in-law, and the disponent retaining possession thereof, while the night before he fled, and done *in meditatione fugæ*, and voluntarily without diligence or compulsion, and done to the prejudice of all other creditors, who were abused by the fraud of their debtor, keeping still his wares in his public booth, whereby they were put in security, while that mid-night before the day immediately wherein he fled, he delivered the said goods; which abuse, and clandestine doing was not at any time lawful; for such acts ought not to be useful to the receiver, by the common debtor's preferring of him voluntarily to the rest, who were deceived by the said clandestine deed; the disposition never being registrated, nor possession apprehended, by instrument or order of law, nor in due time convenient thereto; the pursuer by the contrary having done diligence by arrestment, upon the first day following the night of tradition, and that same day when the debtor fled; which reply was repelled, and the exception sustained, seeing neither before the disposition nor tradition, the pursuer nor no other creditor had done any diligence against the common debtor, in any manner of way; and the common debtor was never charged, nor rebel, at the disposing or tradition foresaid, without which preceding diligence, the act of divory met not the case.

Act. *Advocatus et Nicolson.*Alt. *Stuart et Mowat.*Clerk, *Gibson.**Durie, p. 471.*

1671. December 1.

CRICHTON *against* CRICHTON and CARRUTHERS of Holmains.

No 17.

Fraud practised in filling up the endurance of a tack which had been left blank, found not to affect a singular successor, ignorant of the fraud.

MR GEORGE CRICHTON being a minister in Ireland, and being long out of the country, and having interest by wadset in some lands possessed by the Laird of Holmains, he gave a tack of the said lands to John Crichton, wherein the tack-duty is twelve pennies Scots, and the years of endurance insert with a several hand from that which writes the body, and is fourscore one years; and there is a back-bond of the same date with the tack, bearing, that though the tack-duty was but twelve pennies Scots, yet the tacksman obliged himself, so soon as he attained possession, to pay yearly L. 6 Sterling, which back-bond bears in the narrative, that the tack was set for nineteen years, and these words, nineteen years, are insert with another hand in a large blank. The said tacksman coming to Scotland, did transact with Holmains, who possessed the lands upon another title, and paid him a sum of money, for which he assigned the tack. Now, Mr George Crichton having assigned his right to John Crichton, his good-son, he pursues a reduction of the tack against the said John Crichton tacksman, and against Holmains, on this reason, that the tack when it was sub-