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ment to several of his father's creditors. The disposition found reducible, in so far as his step-mother might thereby be prejudiced in her rights by contract of marriage; although she had done no diligence, to put the son in *mala fide* to pay debts contracted after her life-rent provision. Being *in familia*, he was presumed to know of her right.

mother-in-law, upon the act of Parliament 1621, as being done in defraud of her life-rent provided by her contract of marriage, it was *alleged* for the defender, That his right was for an onerous cause, and condescended upon several debts that he had paid for his father.—THE LORDS having considered the disposition, which did only bear, for love and favour, as likewise the condescence, that many of the debts were after the disposition, so that his payment was voluntary; they did sustain the reason of reduction founded upon the pursuer's contract of marriage, which was prior thereto, notwithstanding that the defender did further allege, that the pursuer had done no diligence before his payment of other creditors; which the Lords did not respect, specially seeing she being his father's wife, he could not but know she was provided to a life-rent. But, albeit the case had not been singular upon that head, yet the most were of the judgment, that a son being *in familia*, and getting an estate for love and favour, he could not prefer one creditor to another, and make the disposition onerous thereby; which may be much disputed, seeing he was not put in *mala fide* by diligence; and so he might lawfully pay any creditor he knew would prevail in a reduction of his right.

Fol. Dic. v. 1. p. 71. Gosford, MS. No 278. p. 119.

1676. June 16.

ARESKINE against REYNOLDS.

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Children who had received provisions, found liable upon the act 1621, for their father's debt, while they could condescend on no separate visible estate he had, when the provisions were granted.

ALEXANDER REYNOLDS having granted a bond of 2000 merks to Elizabeth Guthrie, his future spouse, or any person she should appoint, payable after her decease; which bond being now in the person of Areskine, he pursues the children of the debtor for payment; on this ground, that the debtor had provided them to all his means and estate; which provisions being fraudulent in prejudice of creditors, they are liable by the act of Parliament 1621, to make furthcoming to the creditors, whatsoever they uplift by virtue of such fraudulent dispositions.—The defender *alleged* absolutor, because they did no way represent the defunct; and it was unreasonable, and a novelty, to pursue children having received provisions, as representing their parents by a passive title, especially young children that could not be heirs.

THE LORDS repelled the defence, and found that it was not a passive title, as representing the defunct, but a passive title founded upon the act of Parliament, and the defender's own fraudulent deed in accepting it, to exhaust the debtor's estate, but allowed them to condescend upon any other visible estate that the defunct had at the time of their provisions, that might purge the fraud and vitiosity of these provisions.

Stair, v. 2. p. 428.

* * The same case is thus reported by Dirleton :

1676. February 22.

THE LORDS sustained a declarator, at the instance of a creditor, to hear and see it found, That certain sums, provided by a father to his children, after the contracting of the debt, should be liable and subject to execution for their debt ; and that they should be liable themselves *in quantum lucrati*, though there was not a reduction intended of the said rights, upon the act of Parliament 1621 ; which the Lords were moved to do, not only because they thought, that the said declarator is a reduction upon the matter, but the rather that the summons were offered to be proven by the defenders own oaths : And in effect, as to the most of the sums, they were not a subject of reduction ; seeing the debts were not all assigned to the children ; but the bonds being blank in the creditors name, the father had filled them up in the name of the children ; and as to such as were assigned, for the most part, they were renewed in the name of the children ; the former bonds being given back, with assignments to the same.

1676. July 6.

THE LORDS found, That a father having assigned certain bonds, for provision of his children, the creditors have not only an action of reduction competent to them, but a personal action to refund the sums uplifted, upon the bonds, if the assignation should be found to be fraudulent : But did reserve to the defenders to debate, whether the same was fraudulent ; the defenders having alleged, that the same were granted by their father, having a plentiful fortune for the time, so that he might lawfully provide his children.

Reporter, *Newbyth.*

Dirleton, No 344. & 373. p. 164, & 182.

1677. January 5. & 6.

EARL OF QUEENSBERRY *against* LADY MOUSWELL and Her CHILDREN.

IN a multiplepinding raised at the instance of the tenants of Mouswell, against the Earl of Queensberry and other Creditors, as having right by comprisings to the estate of Mouswell ; and the old Lady Mouswell, as being infest in her life-rent of a yearly annuity of 1000 merks, for which she had obtained a decret *in foro contradictorio*, and thereupon had comprised and was in possession ; whereupon she craved preference, both as to the resting bygones and in time coming. It was *alleged* by the creditors, That, by a minute subscribed, the Lady had restricted her annuity to 800 merks yearly, and could crave no preference. And, as to the decret, it could not militate against them, because it contained a special reservation to the creditors, to prove, that within a just and competent time,

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In a reduction upon the act 1621, at the instance of prior creditors, of bonds of provision granted to children ; this defence was found relevant, that the father had sufficiency of estate at the