

of an irredeemable disposition she had got of these lands just two days before his heritable bond, as fraudulent, on the Act of Parliament 1621.

ANSWERED,—This case falls not under the compass of that Act, which allows only anterior creditors to quarrel dispositions made by their debtors, as the *actio Pauliana* also did.

REPLIED,—In extraordinary cases, even posterior creditors are allowed, as in *Street and Jackson's* case against *Mason*, in 1673, because of the tract of the correspondence betwixt them. *2do*, He must be reputed here an anterior creditor; because *Weir*, during his very communing to borrow *Ralston's* money, gives this disposition only two days before; and, *ex propinquitate temporis, præsumitur dolus atque animus fraudandi*. *3tio*, The disposition bears only love and favour, and a declaration that it should be null if ever he returned home.

*Kemney* reduced the disposition *ex-capite fraudis et circumventionis*, and, in respect of the qualities it bore, whereby it still remained to be *in potestate et bonis debitoris*; but, they craving the Lords' answer, the Lords, on this day, reduced the said disposition. *Vol. I. Page 206.*

1683. *January 11.* LORD HALTON *against* The TOWN of DUNDEE.

See the prior part of this case, *supra*, page 352.

THE debate betwixt the Town of Dundee and my Lord Halton, now *Lauderdale*, anent the patronage and presentation of the second minister there, being reported; the Lords preferred the Town's right upon their dotation, former presentations, and possession. Notwithstanding, he was patron of the parson; and the contrary seemed to be decided on the 18th of *November 1680*, for the *Earl of Haddington* against *The Town of Haddington*. But they differed the cases: for the Town of *Haddington's* possession was not so pregnant and clear. *Vol. I. Page 206.*

1681 and 1683. SIR ALEXANDER FORBES of TOLQUHON *against* DALGARD, Relict of *William Johnston*.

1681. *July 14.*—THE Lords, on *Pitmedden's* report, found the new transaction, made by her husband, (wherein she was not a consenter,) could not take away her right by the first minute, which provided her to so much of the money in liferent.

In the same process, the Lords sustained the allegiance of competent and omitted as relevant against *Tolquhon*: though it was ALLEGED, *1mo*, It was only omitted in a suspension. *2do*, *Tolquhon* offered to depone it was *noviter veniens ad memoriam*, since the discussing of that first suspension; for, though he had the writ lying beside him, yet he had forgot it.

This the Lords also repelled: and made a distinction between *noviter veniens ad notitiam, et ad memoriam*; and found this last not enough, *in facto proprio*, to repone him; and that law only knew the first, but not the second.

*Vol. I. Page 147.*