

1671. July 20. LAIRD OF BIRKINBOG against JOHN GRAHAME of Craigie.

IN a competition among the creditors of umquhile Sir Robert Douglas of Tilliquibilly, a disposition granted by Sir Robert to Grahame of Craigie, was called for to be reduced upon this reason, that it was granted by Sir Robert when he was a notorious and known bankrupt, and fled, and was latent; so that by the act of Parliament 1621, he could not prefer one creditor to another, being in that condition, for that act annuls all dispositions made by bankrupts, without a just and necessary cause; and there was no necessity nor justice for the bankrupt to prefer one creditor to another.—It was answered, That unless there had been legal diligence at the pursuer's instance, or that the defender's disposition had been without a cause onerous, there is no ground for that act to hinder any debtor, though bankrupt, to prefer one creditor to another; for if he had had the money, he might have paid any he pleased; and the cause is both just and necessary, because he might have been compelled by law to have done the same, and there was nothing to hinder the creditor; but, that as he might have first apprised, so he might have taken the first disposition from his debtor. 2do, The pursuer's debt was for a bargain of victual fold and delivered to the common debtor, but a month before the disposition in question, when he was alleged to be bankrupt.

THE LORDS found the last allegiance relevant, and assoltized from the reduction, but did not decide upon the former allegiance.

Fal. Dic. v. 1. p. 66. Stair, v. 1. p. 762.

1672. February 3. HOME against MR. ANDREW BRYSON.

BARBARA HOME pursues Mr Andrew Bryson for implement of a part of her contract of marriage with his father, and for declaring that the lands disposed by his father to him after the contract, being in prejudice of her, a creditor, ought to be burdened with her debt; and particularly a house at the West port, whereof his father had right by apprising. It was alleged for the defender, that albeit his disposition had been without a cause onerous; yet by the act of Parliament 1621, whereupon the pursuer founds, all sums paid by confident or interposed persons to the interposer's creditors, are allowed; and it is offered to be proven, that the defender disposed the right of apprising of the house in question to John Johnston, for satisfying a bond granted by his father as principal, and himself as cautioner, which he might lawfully do, the pursuer at that time having done no diligence, and he himself being cautioner. It was answered, that in this case the defender could not prefer John Johnston; because the bond granted to him by the defunct, if it had competed with this pursuer, albeit prior in diligence, yet she would have been preferred; because it was granted *in lecto*, which was very well known to the defender, having subscribed the bond with his father three or four days before his

No 3.

A disposition granted by a notour bankrupt was not reduced upon the act 1621, at the instance of the other creditors, who had done no diligence; the disposition being in satisfaction of a bargain of victual, fold and delivered to the bankrupt about a month before the disposition.

No 4.

A confident person being pursued upon the act 1621, by an onerous creditor, whose debt was prior to the disposition granted to the confident person; it was not found a good defence, that the disposition was applied to satisfy a debt of the bankrupt's; the bond for the debt being granted *in lecto*, which