

1678. January 18.

KINLOCH *against* BLAIR.

KINLOCH of Gourdie pursues reduction of all rights granted to Mr George Blair by James Strachan of Kirkcubright of Lethindie, on this reason, that Mr George being uncle to the common debtor's heir, a minor, had acted for him, and retarded the pursuer's diligence, and after the pursuer had obtained decret *cognitionis causa*, Mr George bought in rights from other creditors, and took a disposition from the common debtor of this land, which was his whole estate, and being superior to him, granted to him a precept of *clare constat*, and accepted from him a resignation *ad remanentiam*, though he knew that he had no other estate; and albeit it was notour to him that he was bankrupt, his debt far exceeding his estate. The defender *answered*, That the reason is not relevant, seeing he, as assignee, was creditor, and was prior in diligence, and therefore might lawfully take satisfaction from his debtor by a disposition for causes onerous, against which there was no ground from the act of Parliament 1621, which excludes no preference, but that which is in prejudice of creditors, having done diligence lawfully, affecting the debtor's estate, as by horning, inhibition, arrestment, or apprising; and though it has been found, that, after denunciation of lands to be appraised, or execution of an inhibition against the party inhibit personally, that dispositions in favours of other creditors, by the common debtor, granted before the apprising, or publication at the cross where the lands lie, might reduce the intervening dispositions as fraudulent by gratification; yet it was never found that the beginning of a pursuit, or obtaining a personal decret, could impede another creditor to take a disposition for his satisfaction, seeing the pursuer had an ordinary and obvious remeedy by an inhibition. *2do*, Diligence operates nothing, when it is not punctually insisted in: but here four months intervened betwixt the decret *cognitionis causa*, and the adjudication.

THE LORDS found not that member relevant upon anticipation, the diligence being but personal; but found the other members relevant, as grounds of fraud, though not founded upon the act of Parliament; especially, the taking a disposition of the whole estate, from a person notourly insolvent; not being by an interested person, by way of commerce, buying the land, but by a creditor obtaining preference; but declared the reduction to be only to this effect, that both parties might come in proportionally effecting to their sums, as if both had obtained decreets within year and day.

*Fol. Dic. v. 1. p. 67. Stair, v. 2. p. 595.*

1678. June 29.

CRANSTON *against* WILKIE.

JAMES CRANSTON having charged Mr John Wilkie upon his bond, he suspends upon compensation, that this charger being assignee by his father, the charge was compensable by the debt due by the cedent, who, before this assignation, intro-

No 14.

An uncle took a disposition from his nephew of his whole estate, in satisfaction of anterior debts. By this the nephew became utterly insolvent. The transaction was reduced as fraudulent, to the effect of bringing in the other creditors for their proportion.

No 15.

A father granted an assignation *omnium bono-*