

tion, that no execution should pass upon the assignation, it might have been consistent; but it bears, that no execution should pass upon the assignation or bond.

THE LORDS found, That the obligation of mutual relief was implied, where parties were bound conjunctly and severally, albeit not expressed; and that the provision related only to the bond, *quanium ad creditorum*, and did not restrict the implied obligation of the co-principal, and therefore repelled this reason also. (See DEBTOR and CREDITOR. See PROOF. See CAUTIONER.)

*Fol. Dic. v. 1. p. 77. Stair, v. 1. p. 288.*

No 133.

1681. February 8.

NEILSON against Ross.

GILBERT ANDERSON having apprised from James Farquharson in anno 1640, the lands of Kellefs, whereunto John Wilson having right, pursues reduction of a voluntary disposition and infeftment of the same lands, granted by the said James Farquharson to Sutherland of Skelbo, whereupon he was infeft, and Mr John Ross as having right from him, upon these reasons; *imo*, That after legal diligence of a lawful creditor, though it were but inchoate by denouncing of lands to be apprised, or using exhibition against the person inhibited, any voluntary disposition by the debtor to prevent the effect of such diligence, are annulable thereby, as hath been oft-times decided; much more when an apprising was consummate. *2do*, By the act of Parliament 1621, anent fraudulent alienations, and the last clause thereof, it is statute, That if a debtor, after legal diligence, by apprising, horning, or inhibition, shall, by gratification, prefer any other creditor, and dispone to them, such dispositions shall be null.—It was answered for the defender, to the *first* reason, That albeit when any lawful creditor is in *cursu diligentia*, no voluntary disposition by his debtor can exclude him; which cannot be applied to this case, where the appriser was silent and negligent by the space of 10 years without infeftment, or giving a charge, and without pursuing for mails and duties, and so could not be said to be in *cursu diligentia*. As to the *second* reason, the voluntary disposition here is no gratification or preference, but a fair bargain of sale for a price then paid *bona fide*, the buyer having been no creditor before, and therefore falls not within the act of Parliament, and no purchaser could secure himself against apprisings, which at that time were not upon record.

THE LORDS found both these defences relevant to exclude the reasons of reduction. (See LITIGIOUS.)

*Fol. Dic. v. 1. p. 77. Stair, v. 1. p. 856.*

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No 134.

Notwithstanding diligence, a bankrupt may sell his lands for a price instantly paid; such alienation is no preference of one creditor to another.