

1682. *January 10.* JOHN CUNNINGHAME and OTHERS *against* HAMILTON.

No 30.

The Lords demurred about reducing dispositions to a confident person, where no diligence had been done against the bankrupt.

ROBERT HAMILTON merchant in the Bow, having in anno 1676, granted two dispositions to his sifter's husband, viz. one of his house, and another of the goods of his shop, both bearing onerous causes; and continued thereafter to possess the subjects disposed, so as during the year 1677, and a part of the 1676, he was not looked on as in a broken condition: In anno 1678, when his creditors began to put to him, the brother-in-law took infestment, and stopped pointing of the shop with the disposition; and the creditors having raised a process against him;

*Alleged* for the defender: That Hamilton not being a bankrupt, at least not being a notour bankrupt, and there being no diligence against him, he might prefer the defender, who, though a conjunct person, offered to prove an adequate onerous cause of both dispositions.

*Answered*: The Lords, in Kinfawn's case, No 29. p. 900. found a notour bankrupt, (viz. when a man had more debt than gear) though no diligence had been used against him, could not prefer. *2do*, The dispositions must be reputed simulate, in respect the defender lay by and concealed, of design to get the the debtor credit.

THE LORDS demurred on the first reason, but *reduced the disposition on the reason of simulation and latency*, to the effect the defender, and other creditors before the disposition, not these after pursuers, might come in *pari passu*. But this interlocutor is not *sine sue scrupulo*, seeing the proving of the onerous cause might take off the simulation; and it was stopped, and the cause settled friendly.

*Harcarse, (ALIENATION.)* No 128. p. 25.

1682. *November.* KOLSTON *against* WEIR.

No 31.

A MERCHANT at his going abroad, having disposed his lands to his sifter, in case he should not return, and delivered the disposition; he, after the disposition, and before saine thereon, bought a parcel of linen-cloth, to the value of L. 50 Sterling, which by a line he desired his sifter to pay; she did not promise payment, but gave him the saine a-keeping, which she extracted upon his dying abroad. The creditor for the price of the linen raised reduction of the disposition *ex capite doli et fraudis*.

THE LORDS reduced the disposition.

*Harcarse, (ALIENATION.)* No 132. p. 26.

1682. *December 8.* GRANT of Kirdells *against* BIRKENBURN.

No 32.

A father disposed his estate to his

A FATHER having disposed his estate to his eldest son in the year 1657; in anno 1666 a creditor of the father's raised reduction of the disposition; after

which the son made voluntary payment to several other creditors out of the price; and it being found, upon probation led, that the price contained in the disposition was adequate, the pursuer insisted for payment of the debt out of the price.

*Alleged* for the defender: That there being no inhibition, or legal diligence against his father, at the pursuer's instance, he might pay such creditors as he thought fit.

*Answered*: As the father being bankrupt, could not prefer and gratify one creditor in prejudice of another's diligence; no more could the defender, his son, make any such voluntary payments after the raising of the pursuer's reduction, nor could he have the benefit of abatements given by the creditors.

THE LORDS found the pursuer's answer relevant; but found, That the defender might pay, after the reduction, any debt he had undertaken to pay before.

February 1683.—GRANT having insisted that the defender should compt for 7000 merks, as the price of lands contained in the disposition, and value of the lands being proven not to exceed 6000 merks;

THE LORDS found, That the defender, as a conjunct person, needed to hold compt for that sum only, and *quoad ultra* was in the place of a stranger, the disposition bearing the receipt of the whole 7000 merks.

*Harcarse, (ALIENATION.) No 131. & 133. p. 26. & 27.*

No 32.

son. A creditor of the father raised a reduction. After citation, the son made voluntary payments to others. The price was adequate; but the father being bankrupt, the son found entitled only to prefer such creditors as he had undertaken to pay, prior to the reduction.

1694: July 20. SCRYMZEOR of Kirkton *against* LYON of Bridgeton.

SCRYMZEOR of Kirkton *contra* Lyon of Bridgeton, for reduction of a disposition made by James Lyon, when he was *in meditatione fugæ*, to Morison his nephew, for implement to his wife of her matrimonial provision in the first place, and for payment of a tocher due by him to his son-in-law with his daughter in the second, and to Morison himself in the third place, and to his creditors *ultimo loco*.—*Alleged*, It was not reducible, seeing he was not then under legal diligence at his creditor's instance, neither had he fled, but retired some days after; so this cause neither quadrated with Lanton's and Sir Thomas Moncrieff's, (p. 884.) nor with Glackmannan's Creditors' debate with Miln of Carridden. And as to his preferring his wife and daughters, this was no partial gratification nor preference, he not being then a legal bankrupt, and they being creditors by anterior obligations.—THE LORDS resolved to hear this cause in preference.

No 34.

A disposition by a person insolvent, but against whom no diligence had been done, in favour of near relations, reduced.

1696. January 28.

HALCRAIG reported Scrymzeor of Kirkton *contra* Lyon of Bridgeton, and others, mentioned 20th July 1694, for reducing a disposition granted by James Lyon,