

S E C T. IV.

Reduction not Sustained, even after Diligence, if the Debtor
be not Insolvent, nor rendered so by the Alienation.

1686. February 12.

SIR JAMES COCKBURN of that Ilk, *against* LORD ROSS, ALEXANDER MILN of Carridden, and other Creditors of Hamilton of Grange.

No 135.

A disposition granted after horning is challenged. Found that one horning is not sufficient; and that it must be otherwise shown, that the party was *obæratu*s and bankrupt.

SIR JAMES COCKBURN of that ilk, his reduction *contra* the Lord Ross, Alexander Miln of Carridden, and other Creditors of Hamilton of Grange, being heard *in præsentia*, and he founding on an old disposition of relief, given in 1641 by Sir James Hamilton of Grange to the Lord Forrester; the LORDS found the posterior disposition given by John the son, with infestment following thereon, preferable to this old relief; unless Sir James Cockburn would subsume, that it was made real by an infestment, and so not merely a personal right. Then Cockburn repeated a second reason of reduction, that Grange was standing registrated at the horn before this disposition.—*Answered*, This horning could never hinder him to dispone, because he was only denounced at Edinburgh, and not at Linlithgow, where the lands lie, and he dwelt, and so no escheat, but only caption, could follow.—*Replied*, It was enough to produce the effect of the act of Parliament 1621, against bankrupts.—THE LORDS found this not sufficient, unless they would conjoin with it, that he was then *obæratu*s and bankrupt, one horning not being sufficient for that.

Fol. Dic. v. 1. p. 77. Fountainhall, v. 1. p. 402.

1697. November 19.

ALEXANDER MILN of Carridden *against* SIR WILLIAM NICOLSON'S CREDITORS.

No 136.

Actual in solvency allowed to be proven, tho' the debtor was not at the time of alienation publicly known to be bankrupt.

ALEXANDER MILN of Carridden pursues a reduction against some of Sir William Nicolson's creditors on the act of Parliament 1621; that either their debts were contracted, or else they had taken bonds of corroboration in security of their prior debts, after he had charged the common debtor with horning in 1685.—*Answered*, He was not in the terms of the act of Parliament, unless, *imo*, He say, that Sir William was dyvour or bankrupt. *2do*, That his diligence was completed by denunciation before granting their rights.—*Replied*, He needs not allege notour bankrupt. It is sufficient if he prove Sir William was then *obæratu*s and insolvent. And for the second, the act makes the using of a horning sufficient diligence; so where one has charged, it cannot, in propriety of speech,