

reason ought not to be permitted as lawfully done in prejudice of a lawful creditor, by the debtor, who was otherwise unable to pay his debt; in prejudice whereof he could not gift his goods *in toto*, and thereby become irresponsal in hurt of other creditors, albeit not doing diligence before that donation:—And the LORDS found, the onerous cause for which the disposition foresaid was made, might be proven by the acquirer's own oath; which the Lords found enough to prove, seeing the disposition itself reported to be made for sums of money. (*See PROOF.*)

Act, Baird.

Alt. Burnet.

Clerk, Scott.

*Fol. Dic. v. I. p. 67. Durie, p. 611.*

No 25.

1632. February 2.

JACK against GRAY.

ONE Gray having comprised James Liddel's house in Leith, and being infest thereupon, and Jack, son-in-law to the said James, having received a disposition of that house from him, for satisfying of his tocher, owing by his contract of marriage, and being also infest conform thereto; they contending for the mails of the house, Jack was preferred, albeit the disposition made to him, was alleged to be made by a bankrupt, *et inter conjunctas personas*, and *in meditatione fuga, et in momento fuga*, the maker having fled to Berwick on the morrow after the making thereof: And Gray had denounced the land to be comprised, before he was infest on his disposition; likewise he had served inhibition, and was infest, and had arrested the duties of the house, which diligence, so done, ought to give him preference; at least to make him equal with the other party, who is a conjunct person, and has only acquired a voluntary right, without doing of any diligence at all, and was conscious of the bankrupt's flight; and there being also but a few days betwixt his infestment, acquired on diligence, and the other parties, voluntarily purchased, as said is: notwithstanding whereof Jack was preferred, in respect of his infestment; depending on an disposition, made for a preceding lawful onerous cause; seeing the said disposition preceded any diligence done against the common author by Gray; for the LORDS found, it was lawful to a just creditor, to take either payment, or lawful security, in place of payment of his true debt, from any person, albeit becoming bankrupt, *etiam in ipsa fuga*; where there was no preceding inhibition, nor diligence before the doing thereof used by any creditor; and therefore Gray's allegiance was repelled.

*Fol. Dic. v. I. p. 67. Durie, p. 618.*

No 26.

A disposition to a son-in-law is supported, although granted *in momento fuga*. There was no previous diligence, and the disposition was granted in satisfaction of tocher, for which the father was bound in his son's contract of marriage.

1669. January 8.

•CAPTAIN NEWMAN against TENANTS of WHITEHILL, and Mr JOHN PRESTON.

CAPTAIN NEWMAN having apprised the lands of Whitehill from Prestoun of Craigmillar his debtor, and being thereupon infest, pursues the tenants for mails

No 27.

A conjunct person preferred on his dis-