

depone particularly what was the cause of his assignation, that the Lords might determine whether the cause was adequate.

Stair, v. 2. p. 848.

No 5.

1681. *November.*

Mr DAVID WATSON *against* ROBERT MALLOCH.

A DISPOSITION being quarrelled on the act of Parliament 1621, it was *alleged* for the defender, That the disposition was made *ante contractum debitum*.

Answered: The disposition was in trust for the behoof of the common debtor; and the defender having deponed, That it was not in trust, but that it was for an onerous cause;

THE LORDS ordained the defender to condescend on the onerous cause, to the effect that the disposition being applied that way, might extinguish that cause, so as it might not compete with the other creditors, the common debtor being bankrupt; although if it had been *ex dono*, it could not have been quarrelled by his posterior creditor; but the condescendence of the onerous cause was to be instructed only by the defender's own oath.

Harcarse, (ALIENATION.) No 126. p. 25.

No 6.
Found that the disponee must condescend on the onerous cause, to be instructed only by his oath.

1682. *January 14.*

DICKSON *against* DICKSON.

GEORGE DICKSON having disposed his lands to Mr Robert Dickson, for certain great sums of money paid to him by Mr Robert, whereof he grants the receipt, and discharges him, &c. Then follows, *Therefore, and for other good causes and considerations, &c.*

THE LORDS found the adjection in the distinct clause of 'good causes and considerations,' did not weaken the first, 'of sums of money;' but found the disposition did import onerous causes, and not love and favour.

Harcarse, (ALIENATION.) No 127. p. 25.

No 7.

1696. *November 25.*

CREDITORS of Mr George Campbell *against* LORD NEWBYTH,
and OTHERS.

PHILIPHAUGH reported the concurring creditors of Mr George Campbell in the Cannongate, against Lord Newbyth, Drummond of Calander, and Sir Francis Kinloch of Gilmerton. The action was a reduction of their rights on the act of Parliament 1621, being heritable bonds after he was bankrupt; the qualifications whereon they insisted for inferring it were, *imo*, The *fama clamosa* and general report that he was broke; and *de facto* he was then L. 20,000 more in debt, than

No 8.
Prior to the act 1696, regarding bankrupts, the Lords refused to reduce heritable rights granted by a