

No 161. it requires a tract of time to complete it; and, though the disposition quarrelled was not *omnium bonorum*, yet the Provost, about the same time, made two other dispositions of his whole estate, and was thereby in the case of a bankrupt.

*Replied*:—Bateman's diligence was not sufficient, in respect of his negligence to denounce after the days of the charge, which he might have done before the date of the disposition.

*Duplied*: Creditors cannot be obliged to so exact diligence; and it is ordinary to wait some time after the elapsing of the days of the charge, to see if the debtor will pay before he be denounced.

THE LORDS sustained the reason of reduction, in so far as it prejudged the fore-said diligences of Chaplane and Bateman.

*Harcarse, (ALIENATION.) No 141. p. 30.*

No 162.

1688. November.

YOUNG against KIRK.

ONE having charged his debtor without denouncing for four months after, and taken a disposition after the charge; before which disposition, but after the charge, another creditor having charged and denounced, and quarrelled the disposition;

THE LORDS reduced the disposition as a voluntary gratification, the first charger having been negligent in delaying so long to denounce.

*Fol. Dic. v. 1. p. 80. Harcarse, (ALIENATION.) No 156. p. 35.*

1707.

JAMES GORDON of Davach, against WILLIAM DUFF of Dipple.

No 163.

Reduction upon the act 1621 refused, of a disposition made in prejudice of anterior diligence by horning, used at Edinburgh, not at the head burgh of the shire where the debtor lived, no other diligence to affect either the debtor's heritage or moveables having been done for several years after.

IN the reduction upon the act of Parliament 1621, anent bankrupts, at the instance of James Gordon against William Duff, for reducing a disposition granted to the defender by Andrew Geddes of Afile, the pursuer's debtor, after he had been charged with horning, denounced and registered by the pursuer:

*Answered* for the defender:—The act of Parliament 1621, relates only to dispositions granted to one creditor in prejudice of the more timely diligence used by another. Whereas Dipple, at the granting of the disposition made to him, paid a full and adequate price for the same, and got only allowance therein of a small debt that was secured, and preferable by the first investment affecting the subject disposed. *2do*, Albeit the defender had got the disposition quarrelled in satisfaction of bygone debt, the pursuer could not impugn the same upon the act 1621; seeing he did not complete his horning by denouncing the debtor at the market-crofs of the shire where he lived, to make his single escheat fall, and affect the price in the defender's hands; or, by using any other diligence of adjudication, inhibition, &c. to affect either moveables or heritage for several years: But had only denounced at the market-crofs of Edinburgh, in order to caption.