

1695. *December 13.* The CREDITORS of JAMES HUNTER of MUIRHOUSE Competing.

[See the prior and posterior parts of the Report of this Case, Dictionary, page 1023.]

THE competition between the personal Creditors of Mr James Hunter of Muirhouse, and Mr Bruce and others, who stood infest, was reported. The reason of reduction against the real rights was, That their seasines, being taken on heritable bonds, containing precepts of seasine, the infestment was not taken till a few days before Mr James's death, when he was not only notourly bankrupt, and his debts had emerged, and he was charged with horning, but was after they knew he was broken, and so were *participes fraudis*; and after which knowledge they could do nothing to impede the personal creditors from coming in *pari passu* with them.

ANSWERED,—They did nothing but *sibi vigilare*; and his condition is not to be considered as it stood the time of taking the seasine, but *initium negotii est spectandum*, when I lent my money, and got his bond bearing infestment; at which time, he being under no suspicion, I might perfect my security when I pleased, he being denuded *ab ante*: and I took no gratification or voluntary deed from him after his bankruptcy; seeing parties may *uti jure suo quando-cunque*; and, though the Act of Parliament 1617 ordains seasines to be registrate within sixty days after their taking, yet it limits no time for taking seasine after the granting the precept.

The Lords would not proceed to determine this day, because, three of the Lords being creditors, there was not a sufficient *quorum*; yet they signified their judgment so far, that they did not think the reason of reduction relevant as our law yet stood; but that the real creditors behoved to be preferred: And it is obvious, in the case of an inhibition, that it cannot reduce anterior obligations, unless the *nexus* of the *actio Pauliana*, for rescinding fraudulent deeds, be stronger than it.

*Vol. I. Page 688.*

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1695. *December 4 and 19.* JOHN BALLANTYNE against SIR ROBERT DALZIEL of GLENNÆ.

*December 4.*—ARBRUCHEL reported John Ballantyne, late in the King's Guard, against Sir Robert Dalziel of Glennæ, anent the granting certification *contra non producta* in an improbation. Glennæ's tutors pretended they ought to be reponed against the act obliging him to take terms, because he was minor, and had omitted material defences.

The Lords found, Though it had been an act of litiscontestation, as it was only an act for production of the writs called for in the reduction and improbation, a minor is not to be precluded of his lawful defences.

Whereupon he ALLEGED, *1mo.* That the pursuer, not being infest, he could