

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

No 8.  
party to some  
of his credi-  
tors, though  
it was urged  
by other cre-  
ditors pursu-  
ers, that he  
was bankrupt  
at the time.

all his effects and estate could pay. *2do*, He was then lurking and concealing some of his moveables. *3tio*, He was treating with his creditors, offering them a disposition *omnium bonorum*, upon their granting him a personal protection. *4to*, Several creditors had proceeded to diligence by charging, inhibiting, and arresting.—*Answered* to the *first*, *Fama* is not *nomen juris*, but oft a great liar. *2do*, A rigid creditor may force a very responfial person to abscond for a time, and yet not be bankrupt. To the *third*, The defenders knew nothing of any such treaty, and so were *in bona fide* to take and infestment from him. To the *fourth*, The creditors who had done diligence, may, on the last clause of the act of Parliament 1621, quarrel the defenders rights, but that cannot operate for the rest of the creditors who had done none; yea, in 1627, Scougal *contra* Binny, No 1. p. 879. the Lords preferred an assignee by a bankrupt who had timeously intimate his right, and that before his other creditors.—THE LORDS having weighed this condescendence, found the articles did not amount to what was alleged in Sir Thomas Moncrieff's case against Lanton;\* and though there was a standard set now for knowing bankrupts, after which they could do no voluntary deed to the prejudice of the rest of their creditors, yet *that* only took place *pro futuro*, and could not regulate this case; and therefore affoizied Newbyth and Calander from the reduction. And as to Sir Francis Kinloch, the LORDS found the transaction made by Alexander Chaplain, his agent, about lending the creditors his caption, could not oblige him, unless it was done by his order and mandate: But if Sir Francis was in the possession of these house rents, and yet dismissed the tenant after he was in the messenger's hands, he must be liable to compt for his rent, as if he had received it; because by a fact and deed of his it comes to be lost, and he debarred the other creditors from those house mails by his prior right, and so was liable in diligence; and it is more reasonable it should perish to him and not to them.

*Ed. Dic. v. 1. p. 66. Fountainball, v. 1. p. 736.*

1698. July 13.

SIR THOMAS MONCRIEFF *against* GEORGE LOCKHART of Carnwath, and other CREDITORS of Cockburn of Lanton.

No 9.  
An eldest son  
in fee of an  
estate, granted  
a bond of cor-  
roboration  
to some of  
his own and  
his father's  
creditors. In  
a reduction it  
was found,  
that although  
*oberatus* and  
insolvent, as

IN the debate betwixt Sir Thomas Moncrieff, and George Lockhart of Carnwath, and other creditors of Cockburn of Lanton; Sir Thomas seeking to reduce an heritable bond of corroboration granted by young Lanton, to sundry of his own and father's creditors, in regard he could not instruct him notour bankrupt at the time, he having neither retired to the Abbey, nor being under diligence, he recurred to this ground, that he was then materially bankrupt, in so far as he was insolvent and *oberatus* above the value of his estate; after which he could do no deed in prejudice of his creditors.—*Answered*, This fell under no part of the act of Parliament 1621, for it was not a gratuitous deed in favours of a confident

\* *Vide infra* Div. 2. Sect 5.