

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.

person, nor was it in prejudice of creditors their anterior diligence against him ; and so being against no law, his disposing cannot be quarrelled, and consequently the right and conveyance he made to Sir Thomas stands good, though it was gratuitous *quoad* young Lanton, who got nothing for it. Sir George M'Kenzie, in his Observes on that act of Parliament 1621, thinks a gratuitous disposition granted by an insolvent person, falls under that act ; and Stair, in his Institutions, p. 81.* declares such dispositions quarrelable.—Yet the LORDS, by plurality, (sundry dissenting) found Sir Thomas not being a confident person to Lanton, that the disposition and right he received from him could not be reduced on the head of mere insolvency, where he was not under diligence nor had retired ; nor had the other marks now contained in the standard made for bankrupts by the late act of Parliament. (*Vide infra* Div. 2. Sect. 5. *inter eosdem*.)

Fol. Dic. v. 1. p. 66. Fountainball, v. 2. p. 11.

No 9.
he was not bankrupt in terms of the act 1696, and the persons favoured were not confident, the bond was good.

1751. June 25. ALEXANDER CORSAN *against* CAMPBELL of Shawfield.

SIR THOMSON GORDON of Earlston disposed his estate to his son Thomas Gordon, under the burden of debts contained in a list, in which the pursuer's in this case was not insert.

Sir Thomas and Thomas Gordon disposed the estate to Daniel Campbell of Shawfield, whose daughter Mr Gordon had married ; on this narrative, ' That they were owing certain great debts to different persons their creditors ; and that he, for payment of the said debts, had advanced and paid to the said Thomas Gordon a certain sum of money, as the agreed price of the lands and estate ; whereof Thomas Gordon granted the receipt.'

A contract had been drawn up, purporting, That Sir Thomas and his son should dispose the estate ; that Shawfield should therefore pay to the creditors ten shillings in the pound ; and that they should accept thereof ; providing, that if any of them should not subscribe, the subscribers should be free : But this was not signed by Sir Thomas, nor by many of the creditors.

Shawfield paid to most of the creditors this composition ; and had their debts made over to him.

Alexander Corfan merchant in Hamilton, who had been cautioner for Sir Thomas for 1000 merks Scots, and creditor by bond for L. 60 Sterling, insisted in a reduction of both dispositions.

Pleaded for the pursuer, The disposition by Sir Thomas to his son is reducible, in so far as the value of the estate exceeded the sum of the debts undertaken by him : And the disposition to Shawfield is reducible, as, contrary to the narrative thereof, he paid no money for the same : And the pursuer is not concerned with any alleged concert of paying to the creditors ten shillings in the pound, as he was no party to any such concert, nor signed the contract : The pursuer is not concerned to plead against the disposition's being sustained to Shawfield, for the

No 10.
A debtor sold his estate at an agreed price. The disponee, instead of advancing the sum, became bound to pay 10s. per pound to the grantor's creditors. The sale reduced upon the statute 1621, at the instance of a creditor not acceding ; reserving the disponee's claim for what he had actually paid to any creditor.