

## BANKRUPT.

## DIVISION I.

## Reduction of Alienations made by Bankrupts where the Reducer has done no Diligence.

## SECTION I.

## Of Onerous Alienations.

1627. January 31.

SCOUGAL against BINNIE and Others.

IN an action betwixt Scougal and Binnie, and the other creditors of Patrick Craig, the which Scougal being assigned by the said Patrick to some debts owing to him, for satisfying of a debt due to him by the said Patrick; and which debt of the said Patrick's, he instantly instructed, and therefore craved payment of the debt assigned to him; the rest of the creditors contended, that that assignation being made by the common debtor, who is become bankrupt, and being made that same day upon which he fled, and so done *in meditatione fuga*; therefore, by the act of dyvoury, he could not prefer one creditor to another; but seeing the pursuer hath done no diligence to make him be preferred to the rest of the creditors, the assignation foresaid could not make him be preferred.—This *allegiance* was repelled, for the LORDS found the pursuer, being a true and just creditor, might take payment of his true debt from his debtor, and so might also take an assignation for his payment, seeing no other of the creditors had done diligence against the common debtor by action or arrestment, execute before this assignation, and that it was not qualified that the pursuer was *particeps fraudis* with the common debtor, nor that he was rebel at any of the persons defenders instances, or at the horn.

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Found, that as a creditor might take payment from his debtor, although *in meditatione fuga*, (in the present case on the same day that he fled,) so he might also take assignation to debts for his payment; since no other of the creditors had done any sort of diligence against the common debtor, before the assignation.

February 1.

IN an action of John Scougal's mentioned January 31. 1627, the Lords preferred the assignee made by the bankrupt, where the assignee had intimate his assignation, and intented his pursuit as timeously as the other creditors of the

No 1.

bankrupt, who had arrested that very same day of the intimation of the assignee's assignation, and had intented their actions also timeously, the assignation being made before the arrestment two days, and the common debtor being debtor to the assignee, before the debt owing to the other creditors, and his term of payment being before theirs, the common debtor not being rebel, nor charged by letters of horning, the time of the making of the assignation, and the assignee not being *particeps fraudis, quia qui suum recipit non videtur alteri fraudem facere, & I. C. Qui habet rem ex causa lucrativa tenetur creditoribus actione Pauliana, licet ignoraverit consilium fraudulentum: qui vero rem accipit ex causa onerosa non alitur tenetur creditoribus, quam si fuerit particeps fraudis, l. pen. C. de Revoc. quæ in fraud.*

Act. Belsbes.

Clerk, Gibson.

Fol. Dic. v. 1. p. 66. Durie, p. 265. &amp; 267.

No 2.

A disposition to a brother, for satisfying debts resting to himself, and those for which he stood bound as cautioner, and to pay off such other creditors as he should think fit was found valid, only as to his own debts and cautionries; and to fall under the act 1621 as to the others.

1669. January 6.

Captain NEWMAN against Mr JOHN PRESTON.

CAPTAIN NEWMAN being married to a sister of George Preston of Craigmiller, to whom he gave an infeftment for 6000 merks out of his estate, and for which sum there was a comprising likewise led of the lands of Whythill: The said Captain did thereupon pursue for maills and duties, wherein Mr John Preston, brother to the disponent, compeared, and did produce an infeftment of the said lands for his own debts and cautionries, as likewise for the debts of the most part of the said George's creditors, whereof Newman was one. In which disposition there being a provision in favours of the said George, during his lifetime; and failing of him, by decease, to the said Mr John, to pay off and prefer any creditor he pleased; as likewise there being a reversion in favours of the disponent; both which clauses the said George had renounced in favours of his brother Mr John; he thereupon did found a defence as having power, and accordingly having preferred and satisfied, the rest of the creditors—The Lords did sustain this defence, only in so far as the said provision might be extended to the said Mr John his own proper debts and cautionries, for his brother; as to which they gave him preference, notwithstanding it was alleged for the pursuer, That the said provision, and liberty to prefer, was fraudulent, and fell within the act of Parliament 1621, anent bankrupts; it being *inter conjunctas personas*; and the pursuer particularly enumerate in the disposition as a lawful creditor. Notwithstanding whereof the defence was sustained, being restricted as said is.

Fol. Dic. v. 1. p. 66. Gosford, MS. p. 27.