

THE LORDS, in respect it was admitted by the procurator for the creditors, that Bailie Hay had a sufficient free estate at the date of the bond, sustained the same.

No 54.

C. Home, No 203. p. 337.

S E C T. VI.

What is to be considered such a separate Estate as will bar Reduction of a Gratuitous Alienation.

1624. February 20. GEORGE PRINGLE *against* MARK KER.

THE LORDS found this exception relevant against bankrupts, that the Lord Bothwell, the time of the bond made to Mark Ker, his good-brother, there was as many lands free, as to pay the debt owing to George Pringle.

Kerse, (CREDITOR.) MS. fol. 57.

No 55.

1665. February 10. LADY GREENHEAD *against* LORD LOURIE.

THE Lady Craig, and the Laird of Greenhead her second husband, pursues the tenants of Craig, wherein she is infest, for mails and duties. In which process, my Lord Lourie compares for his interest, and *alleges*, That he having apprised the estate of Craig, and being infest, thereupon hath raised reduction of the lady's infestment, on this reason, that a part of his sums being anterior to the lady's infestment, who was competently provided, by her contract of marriage, in thirty chalder of victual; and this additional infestment of fifty chalder of victual, being betwixt most conjunct persons, husband and wife, in so far as it is posterior to the pursuer's lawful debt, ought to be reduced upon the act of Parliament 1621.—The pursuer *answered*, the reason ought to be repelled, *imo*, Because the act of Parliament being only against gratuitous dispositions made by bankrupts, in prejudice of their lawful creditors, is not relevant, seeing Craig the disponent was not a bankrupt. *2do*, As he was not a bankrupt, so neither was he *insolvendo*; because the reversion of his estate is sufficient to pay his debt, albeit the same were effected with this additional jointure.—It was *answered* for the defender, That albeit the title and narrative of the act be against bankrupts, yet the statutory part thereof is against all gratuitous dispositions by conjunct persons; so that the defender needs not allege, that either the disponent was bankrupt, or *insolvendo*, but that the lady's infestment is betwixt conjunct persons, without an

No 56.

A debtor, not bankrupt, had granted an additional jointure to his wife, formerly provided for. Contended for the lady, in a competition with an appriiser, that the reversion of the granter's estate was sufficient, altho' burdened with the additional jointure. The appriiser preferred.

No 56.

onerous cause.—The pursuer *answered*, That the disponer was neither bankrupt nor *insolvendo*; and the defender can have no interest, unless there were fraud or prejudice, which the defender cannot allege; because the pursuer is content that the defender have access by his apprising to the jointure lands, in so far as will satisfy his annualrents; and by the act betwixt debtor and creditor, the Lords are impowered to restrict apprisings to their annualrent; and so he cannot pretend no prejudice, providing he assign the lady to his apprising, in so far as he satisfies his annualrent out of her additional jointure.

THE LORDS found the answer to the reduction relevant, upon purging of the appriser's prejudice, not only by admitting him to have access to the apprised lands upon assignation, as said is, during the legal, but with declaration, that if the lady redeemed not within the legal, the lands should be irredeemable, and the lady totally excluded.

Stair, v. I. p. 266.

1680. November 10.

No 57.

The Lords required a visible estate in heritable rights, not in personal bonds or money. This afterwards altered, and a visible estate *quomodocunque* only required.

LUDOVICK CALLANDER and his SPOUSE *against* GILBERT M'KELL.

THE LORDS reduced the disposition to the daughter on the act of Parliament 1621, unless they proved that the father disponer, left a visible estate, not in personal bonds or money, (for that may be daily altered,) but in heritable rights, sufficient for payment of the pursuer's debt libelled, which was before found betwixt Mouswell and his Creditors, No 69. p. 934.—But the LORDS altered this afterwards, and only required a visible estate *quomodocunque*. See the MS. 4to A. 2. p. 59.

Fol. Dic. v. I. p. 69. Fountainball, MS.

No 58.

Where a person had exhausted his land estate by gratuitous infeftments, it was not sustained to bar reduction, that the granter had a sufficient personal estate at the time of granting. Creditors were found not obliged to expiscate a latent moveable estate.

1688. July 20.

CHILDREN OF MOUSWELL *against* DUKE OF QUEENSBERRY.

THE Laird of Mouswell, who was owing several debts, disposed the fee of his estate to his son, in his contract of marriage, reserving power to burden the same with 18,000 merks, for providing the rest of his children, and doing his other affairs; and thereafter gave bonds of provision relative to the reservation in favours of eight children, extending in the whole to 10,000 merks, with a precept of sasine, whereupon the children were infeft safe. After the father's death, the eldest son granted bonds of corroboration to the father's anterior creditors, who thereupon comprised and were infeft, but not on the father's bond; and having raised reduction of the children's bonds of provision upon the act of Parliament 1621:

Alleged for the children:—That the pursuers were only creditors by a clause of relief of cautionry for the father, and *actio* was not *nata* till distress in the year