

1682. *January 10.* JOHN CUNNINGHAME and OTHERS *against* HAMILTON.

No 30.

The Lords demurred about reducing dispositions to a confident person, where no diligence had been done against the bankrupt.

ROBERT HAMILTON merchant in the Bow, having in anno 1676, granted two dispositions to his sifter's husband, viz. one of his house, and another of the goods of his shop, both bearing onerous causes; and continued thereafter to possess the subjects disposed, so as during the year 1677, and a part of the 1676, he was not looked on as in a broken condition: In anno 1678, when his creditors began to put to him, the brother-in-law took infestment, and stopped pointing of the shop with the disposition; and the creditors having raised a process against him;

*Alleged* for the defender: That Hamilton not being a bankrupt, at least not being a notour bankrupt, and there being no diligence against him, he might prefer the defender, who, though a conjunct person, offered to prove an adequate onerous cause of both dispositions.

*Answered*: The Lords, in Kinfawn's case, No 29. p. 900. found a notour bankrupt, (viz. when a man had more debt than gear) though no diligence had been used against him, could not prefer. *2do*, The dispositions must be reputed simulate, in respect the defender lay by and concealed, of design to get the the debtor credit.

THE LORDS demurred on the first reason, but *reduced the disposition on the reason of simulation and latency*, to the effect the defender, and other creditors before the disposition, not these after pursuers, might come in *pari passu*. But this interlocutor is not *sine sue scrupulo*, seeing the proving of the onerous cause might take off the simulation; and it was stopped, and the cause settled friendly.

*Harcarse*, (ALIENATION.) No 128. p. 25.

1682. *November.* KOLSTON *against* WEIR.

No 31.

A MERCHANT at his going abroad, having disposed his lands to his sifter, in case he should not return, and delivered the disposition; he, after the disposition, and before saine thereon, bought a parcel of linen-cloth, to the value of L. 50 Sterling, which by a line he desired his sifter to pay; she did not promise payment, but gave him the saine a-keeping, which she extracted upon his dying abroad. The creditor for the price of the linen raised reduction of the disposition *ex capite doli et fraudis*.

THE LORDS reduced the disposition.

*Harcarse*, (ALIENATION.) No 132. p. 26.

1682. *December 8.* GRANT of Kirdells *against* BIRKENBURN.

No 32.

A father disposed his estate to his

A FATHER having disposed his estate to his eldest son in the year 1657; in anno 1666 a creditor of the father's raised reduction of the disposition; after