

1666, whereas the children's bond and infeftment was in the 1654; and there being two liferent infeftments of annualrent in favours of two ladies, preferable to the creditors, which, with two apprifings for bygones thereof, did near exhaust the fee, and was not quarrellable upon the 1621.

1. THE LORDS, in respect the cautioners before distrefs had not interest to fecure themselves in the estate, found the fee should only come *in computo, in quantum* it exceeded the liferent and apprifings in the year 1664; and found that the liferents ought to be computed according to the whole time they lasted.

*Alleged* for the children: That the father had a fufficient estate the time of granting their provifions, *viz.* a wood worth 10,000 merks, and feveral personal bonds and securities, the time of his granting the bonds of provifion; and alfo an estate in land about Dumfries. It was *answered* for the creditors, That it was not in the father's power to fecure children's provifions, or posterior gratuitous debts to strangers upon his lands, and leave his anterior creditors, for onerous caufes, to feek their payment off the personal estate, which is fubject to many accidents by irrefponfal debtors, in the bonds, or the father's own efcheat, which are not obvious to the notice of creditors, as the cafe of lands, which is difcoverable from the registers; and for that fame reafon creditors ought not to be left to the cutting of woods, or to difcufs controverted titles of lands; and though Moufwell was in poffeffion of lands about Dumfries, his right was but a truft for the behoof of Mr Rome his brother-in-law, whofe creditors had apprifed it, and were in poffeffion before the 1664; and 'tis juft that creditors, in a competition with children, be placed upon the beft and fureft part of the estate.

*Replied* for the children:—The father having a fufficient personal estate or goods, the time of granting their provifions, cannot be faid to be bankrupt; and they are bound to fay no more in defence of their rights.

2. THE LORDS found, That the father could not fecure the children's provifions by infeftment upon the land estate, and leave the creditors to expifcate and feek for the moveable estate; and found, that the purfuer ought to allege and prove, that Moufwell the debtor, had a valid right to the lands about Dumfries, and was in poffeffion thereof the time of granting the provifions; and that poffeffion alone was not fufficient.

*Fol. Dic. v. 1. p. 69. Harcarfe, (BONDS.) No 226. p. 53.*

1712. July 20.

KER *against* SCOT.

No 59.

In the computation of a feparate estate, the LORDS refufed to reckon any heritage which was tailzied with claufes irritant, and which the common debtor could not difpofe of for payment of his debts. See the particulars *voce* TAILZIE.

*Fol. Dic. v. 1. p. 69.*