

of Sasines; though the parties get back their principal evidents again: And, therefore, they not only found this extract a sufficient title *ad inchoandam litem* as of before, but also decerned in the pointing of the ground. But if Dundonald raise an improbation, he will force them either to produce the principal bond, (which is the warrant of the sasine,) or else obtain certification against it.

No 435.

Fol. Dic. v. 2. p. 250. Fountainball, v. 1. p. 563.

DIVISION IV.

Private Deed, how far probative.

S E C T. I.

If probative of its Onerous Cause against Creditors and Donatars of Escheat.

1622. February 13. YOUNG against DENNISTON.

No 436.

THE LORDS found, That a disposition made by Alexander Aikenhead to Alexander Denniston, his brother-in-law, being quarrelled by Mr George Young's daughter, a true creditor, was null, unless Alexander Denniston would allege and prove just and true causes of making the assignation to him.

Fol. Dic. v. 2. p. 252. Haddington, MS. No 2598.

*** Durie reports this case :

1622. February 12.—IN an action betwixt Alexander Denniston and ——— Young, daughter to umquhile Mr George Young, it being controverted, if an allegiance, founded upon the act of Sederunt made against dispositions made by bankrupts, and ratified in Parliament, within the compass whereof Young alleged that Denniston's right fell, seeing it was an assignation made to him by a confident and conjunct person, without any just, true, or necessary cause

No 436.

preceding, as the act expresseth, if that part of the allegiance required any probation, viz. bearing, that it was made without any true or necessary cause for which the same was made; seeing Denniston *alleged*, That the act appointed that that should be proved, either by writ or the party's oath;—the LORDS found, that the same was not necessary to be proved, seeing it was a negative which proved itself, and that the party, in whose favour the writ was granted, ought to qualify and allege the just and necessary cause preceding, for the which the same was made to him by the bankrupt to the confident person, otherwise that the same could not be sustained against a true creditor.

Act. Stewart.

Alt. Mowat.

Clerk, Gibson.

Durie, p. 17.

* * * Kerse reports a subsequent part of this case :

1622. *February 27.*—IN an action of double pointing, the LORDS sustained an assignation made to a confident person by a bankrupt, upon the assignee's declaration, that he took it to the behoof of a third person, who was a creditor; albeit the declaration was disconform to the assignation, and clause therein contained, bearing, that it was made for sums addebted by the cedent himself.

*Kerse, MS. fol. 56.*1625. *January 28.*LIVINGSTON *against* ABERNETHY and LORD KILSYTH.

No 437.

An assignation, expressing that it was made for sums of money addebted by the cedent, was found to afford evidence of its own onerosity.

IN an action Livingston *contra* Abernethy and Lord Kilsyth, whereof the case was, that the Lord Kilsyth being addebted to one Lennox in the sum of 500 merks, to which sum Lennox makes Balfour his assignee, and in the assignation it is expressed, that it is made for sums of money addebted to him by the cedent; and which assignation is intimated to the Lord Kilsyth, and that same day of the intimation it is arrested by Abernethy, creditor to Lennox, conform to his bond; which bond was long before the date of the assignation made to Balfour; upon the which arrestment and assignation, so made by the said two parties, the Lord Kilsyth suspends upon double pointing; wherein the two parties compearing, and disputing which of them had best right to the sum, the arrester *alleged*, That he should be preferred to the assignee, in respect of the bond for debt owing to him before the assignation, and that he offered to prove, that his arrestment, albeit executed the same day of the intimation, was yet executed that day preceding the hour and time of the said intimation, and so was before the intimation affected to him, by his arrestment, as a lawful creditor, verified by the bond produced; whereas, the assignee ought not to be preferred, there being no preceding cause in writ before the assignation extant, which might constitute the cedent debtor to the assignee.