

1663. February 6.

LORD LOURIE *against* EARL OF DUNDEE.

THE Lord Lourie pursues a reduction of a disposition, made by Carnegie of Craig to the Earl of Dundee, as being posterior to the pursuer's debts, and in prejudice thereof, upon the act of Parliament 1621, against bankrupts; and, for instructing of the reason, repeats the disposition itself, being betwixt confident persons, cousins-german, and without cause onerous, in so far as it bears reservation of the disponent's and his Lady's liferent; and provision to be null, if Craig have heirs of his body, in whose favours Dundee is to denude himself, upon payment of his expence.—The defender *alleged*, That the libel is not relevant. *Imo*, Because Craig is no bankrupt, nor any diligence done against him, before the disposition. *2do*, He is not insolvent by the disposition, because there is reserved to him a power to sell as much of the land as is worth 80,000*l.* for debt, and so is not *in fraudem creditorum*; but the pursuer ought to pursue for that provision, either by apprising or personal action.

THE LORDS found the reason relevant and proven by the tenor of the disposition; and therefore reduced, to the effect, that the pursuer might affect the said lands with all legal diligence for his debt, as if the disposition had not been granted; for they thought, seeing by this disposition there remains no estate sufficient, *ad paratam executionem*, that there was no reason to put the pursuer to insist in that clause, to restrict himself thereby to a part of the land, but that he ought to have preference for his debt, upon his diligence, affecting the whole land.

*Fol. Dic. v. 1. p. 68. Stair, v. 1. p. 175.*

1677. January 5.

EARL OF GLENCAIRN *against*

BRISBAINS.

FRANCIS FREELAND of that ilk, having disposed to John McNair and Robert Hamilton irredeemably; and they thereafter having disposed the same, with consent of the said Francis, to John Brisbane; and the said John having granted a reversion to the said Francis, his heirs of his own body allenary, for payment of the sum of 8000*l.* merks, and what further sums should be disbursed for improving the lands, building or repairing the houses, with annual rent free the disbursements, upon the said John Freeland, his own declaration; and that after the first term, after the said Francis, his decease.—The Earl of Glencairn, creditor to the said Francis Freeland, *alleging*, That the said reversion was granted by fraud and contrivance, and in prejudice of him and lawful creditors; and that the said reversion was granted in manner foresaid, not in favours of his debtor, but his heirs, for eluding their execution; pursued a reduction of the said disposition made in favours of Hamilton and McNair; and a declarator that Brisbane's right should fall in consequence; and that it should be lawful to him to comprise the

No 40.

A gratuitous disposition, reserving the granter's liferent, and a faculty to sell a part of the estate for payment of debt, was reduced; to the effect, that the creditor might proceed in diligence against the lands, as if the disposition had not been granted; and without regard to the faculty to sell.

No 41.

A reversion being granted in a disposition to the disponent's heirs only, himself being *operatus*; the Lords thought, that if the price were not adequate, (which was to be tried,) a reduction of the disposition, at the instance of creditors, ought to be sustained, and access allowed to them to comprise the reversion.