

No 1.

bankrupt, who had arrested that very same day of the intimation of the assignee's assignation, and had intented their actions also timeously, the assignation being made before the arrestment two days, and the common debtor being debtor to the assignee, before the debt owing to the other creditors, and his term of payment being before theirs, the common debtor not being rebel, nor charged by letters of horning, the time of the making of the assignation, and the assignee not being *particeps fraudis, quia qui suum recipit non videtur alteri fraudem facere, & I. C. Qui habet rem ex causa lucrativa tenetur creditoribus actione Pauliana, licet ignoraverit consilium fraudulentum: qui vero rem accipit ex causa onerosa non alitur tenetur creditoribus, quam si fuerit particeps fraudis, l. pen. C. de Revoc. quæ in fraud.*

Act. Belsbes.

Clerk, Gibson.

Fol. Dic. v. 1. p. 66. Durie, p. 265. & 267.

No 2.

A disposition to a brother, for satisfying debts resting to himself, and those for which he stood bound as cautioner, and to pay off such other creditors as he should think fit was found valid, only as to his own debts and cautionries; and to fall under the act 1621 as to the others.

1669. January 6.

Captain NEWMAN against Mr JOHN PRESTON.

CAPTAIN NEWMAN being married to a sister of George Preston of Craigmiller, to whom he gave an infeftment for 6000 merks out of his estate, and for which sum there was a comprising likewise led of the lands of Whythill: The said Captain did thereupon pursue for maills and duties, wherein Mr John Preston, brother to the disponent, compeared, and did produce an infeftment of the said lands for his own debts and cautionries, as likewise for the debts of the most part of the said George's creditors, whereof Newman was one. In which disposition there being a provision in favours of the said George, during his lifetime; and failing of him, by decease, to the said Mr John, to pay off and prefer any creditor he pleased; as likewise there being a reversion in favours of the disponent; both which clauses the said George had renounced in favours of his brother Mr John; he thereupon did found a defence as having power, and accordingly having preferred and satisfied, the rest of the creditors—The Lords did sustain this defence, only in so far as the said provision might be extended to the said Mr John his own proper debts and cautionries, for his brother; as to which they gave him preference, notwithstanding it was alleged for the pursuer, That the said provision, and liberty to prefer, was fraudulent, and fell within the act of Parliament 1621, anent bankrupts; it being *inter conjunctas personas*; and the pursuer particularly enumerate in the disposition as a lawful creditor. Notwithstanding whereof the defence was sustained, being restricted as said is.

Fol. Dic. v. 1. p. 66. Gosford, MS. p. 27.