SECT. II.

Alienations *ominum bonorum.*

1669. *November* 18. HENDERSON *against* ANDERSON.

No 13.
A diſpoſition bearing to be onerous, where the parties were not conjunct, being a diſpoſition *omnium bonorum*, is ſet aſide to the effect of making the diſponee account.

HEWAT having made a general diſpoſition of his whole goods and gear to Anderſon; and thereafter having diſponed to Henderſon, his creditor Henderſon purſues Anderſon for reduction of his diſpoſition, as being fraudulent in prejudice of creditors, without any equivalent cauſe onerous, contrary to the act of Parliament 1621, againſt fraudulent diſpoſitions.—The defender *alleged*, That the reaſon was not relevant upon the ſaid act, becauſe Hewat and Anderſon were not conjunct perſons, and becauſe his diſpoſition bore an onerous cauſe, viz. for ſums due to himſelf, and for 2000 merks, and other ſums, for which he was cautioner for Hewat, and gave in a condeſcendence of the particular ſums, and offered not only to depone thereupon himſelf, but to aſtruct the ſame by the oath of Hewat's creditors to whom he paid.—The purſuer *answered*, That albeit ordinarily diſpoſitions amongſt perſons not conjunct, bearing cauſes onerous, were ſufficient; yet this diſpoſition being manifeſtly fraudulent, in that it is *omnium bonorum*, which the receiver thereof could not but know to be in prejudice of the diſponer's other creditors, to whom there was nothing left, and ſo is *particeps fraudis*; and likewiſe the ſum of 2000 merks, which is the only cauſe ſpecially expreſſed, being inſtructed to be falſe by diſcharges of the moſt part of that ſum by the creditor to Hewat himſelf, the remainder of the cauſe being general, ought to be inſtructed not by Anderſon's oath, but by ſufficient probation, at leaſt the verity of the debt by Hewat's oath, and the payment thereof by the oaths of Hewat's creditors, to whom it was paid; and that it was paid by Anderſon before the diſpoſition, at leaſt that he was bound for payment thereof before the diſpoſition.—The defender *answered*, That diſpoſitions of moveables are valid without any writ, eſpecially before any diligence done by the purſuer; and if thoſe who acquire moveables were obliged to inſtruct the cauſe otherwiſe than by their own oaths, all commerce would ceaſe, and the defender having taken a diſpoſition in writ, can be in no worſe caſe than if he had none.

THE LORDS having conſidered the defender's condeſcendence, found, That what was due to the defender himſelf by Hewat before the diſpoſition, ſhould be ſufficiently inſtructed by Anderſon's own oath; but as to what was due to him, or paid by him for Hewat, after the diſpoſition, and before any right or diligence of Henderſon's, that the ſame ſhould alſo be allowed, being inſtructed by Hewat's oath, and thoſe who received the ſums; and that accordingly Anderſon ſhould accompt for the whole goods he meddled with, and pay the ſuperplus thereof to Henderſon the purſuer, over and above the ſaid articles.

Stair, *v.* 1. *p.* 652.