

Which the LORDS found relevant, and declared the pursuer might reduce this voluntary disposition upon the interdiction but prejudice of the defender's apprising. See REDUCTION.

No 97.

*Fol. Dic. v. 2. p. 80. Stair, v. 1. p. 359.*

1669. February 16.

The CREDITORS OF BALMERINO and COUPER *against* My Lady COUPER.

THE deceased Lord Couper having disposed his estate to his Lady, some of his creditors, and some of Balmerino's creditors, who was his heir apparent, did raise reduction of the said disposition, as done on death-bed; and, before the day of compearance, they give in a supplication desiring witnesses to be examined, and to remain *in retentis*, that Couper had contracted his disease, whereof he died, before the subscribing of this disposition, and that he never went out thereafter, but once to the kirk, and market of Couper, which times he was supported and fell down dead, a swoon, before he was gotten home. It was *answered* for the Lady Couper; *first*, That witnesses ought not to be examined until the relevancy of the libel were discussed, unless they were old or valetudinary, or penury of witnesses, whereas there are here fotty witnesses craved to be examined, and the coming to kirk and market being public deeds, there would be no hazard of wanting witnesses; *2dly*, The creditors or apparent heir have no interest unless the heir were entered, or they had apprised or had a real right; neither can the creditors be prejudged by the disposition, as being on death-bed, because they may reduce the same as being posterior to their debts, upon the act 1621, and the reason of death-bed is only competent to heirs and to those having real rights from the heir, and not to their personal creditors.

THE LORDS ordained the witnesses to be examined, to remain *in retentis*, concerning my Lord Couper's condition the time of subscribing the disposition, and of his coming abroad; and allowed my Lady also witnesses, if she pleased, for proving what his condition was at these times, reserving all the defences and allegiances of either party in the cause; for they found that the creditors of Balmerino, as apparent heir, had interest to declare that their debts might, by legal diligences, affect the estate of Couper unprejudged by this disposition, as being made by Couper on death-bed, and that the reduction, in so far as might contain such a declarator, would be sustained; for no party can be hindered to declare any point of right competent to him; and it was also thought, that though there were many witnesses called to find out who truly knew the defunct's condition, yet there might be few who truly knew the same, and these might be removed out of the way, either by death or by collusion. See PROCESS,

*Fol. Dic. v. 2. p. 79. Stair, v. 2. p. 605.*

No 98.

A reduction of a disposition on death-bed sustained at the instance of the personal creditors of the apparent heir, even without necessity of adjudging.