

No 56.

onerous cause.—The pursuer *answered*, That the disponer was neither bankrupt nor *insolvendo*; and the defender can have no interest, unless there were fraud or prejudice, which the defender cannot allege; because the pursuer is content that the defender have access by his apprising to the jointure lands, in so far as will satisfy his annualrents; and by the act betwixt debtor and creditor, the Lords are impowered to restrict apprisings to their annualrent; and so he cannot pretend no prejudice, providing he assign the lady to his apprising, in so far as he satisfies his annualrent out of her additional jointure.

THE LORDS found the answer to the reduction relevant, upon purging of the appriser's prejudice, not only by admitting him to have access to the apprised lands upon assignation, as said is, during the legal, but with declaration, that if the lady redeemed not within the legal, the lands should be irredeemable, and the lady totally excluded.

*Stair, v. I. p. 266.*

1680. November 10.

No 57.

The Lords required a visible estate in heritable rights, not in personal bonds or money. This afterwards altered, and a visible estate *quomodocunque* only required.

LUDOVICK CALLANDER and his SPOUSE *against* GILBERT M'KELL.

THE LORDS reduced the disposition to the daughter on the act of Parliament 1621, unless they proved that the father disponer, left a visible estate, not in personal bonds or money, (for that may be daily altered,) but in heritable rights, sufficient for payment of the pursuer's debt libelled, which was before found betwixt Mouswell and his Creditors, No 69. p. 934.—But the LORDS altered this afterwards, and only required a visible estate *quomodocunque*. See the MS. 4to A. 2. p. 59.

*Fol. Dic. v. I. p. 69. Fountainball, MS.*

No 58.

Where a person had exhausted his land estate by gratuitous infeftments, it was not sustained to bar reduction, that the granter had a sufficient personal estate at the time of granting. Creditors were found not obliged to expiscate a latent moveable estate.

1688. July 20.

CHILDREN OF MOUSWELL *against* DUKE OF QUEENSBERRY.

THE Laird of Mouswell, who was owing several debts, disponed the fee of his estate to his son, in his contract of marriage, reserving power to burden the same with 18,000 merks, for providing the rest of his children, and doing his other affairs; and thereafter gave bonds of provision relative to the reservation in favours of eight children, extending in the whole to 10,000 merks, with a precept of sasine, whereupon the children were infeft safe. After the father's death, the eldest son granted bonds of corroboration to the father's anterior creditors, who thereupon comprised and were infeft, but not on the father's bond; and having raised reduction of the children's bonds of provision upon the act of Parliament 1621:

*Alleged* for the children:—That the pursuers were only creditors by a clause of relief of cautionry for the father, and *actio* was not *nata* till distress in the year