

warrantable gratification, prohibited by the Act of Parliament 1621. ANSWERED,—That act only takes place where creditors have done diligence ; and here there is none ; and the receivers are creditors for most onerous causes, *et sibi vigilarunt*.

The Lords, before answer, granted a mutual probation anent his condition the time of his granting thir dispositions, *viz.* if he was bankrupt, or holden and reputed solvent at that time ; and if he convocated and gathered his friends together, and privily disclosed his case to them ; for that made it a machination and contrivance, and them *participes fraudis*. *Vide* 18th Nov. 1687.

*Vol. I. Page 405.*

1687. *November* 18.—The Lords advised the probation led between Scott of Goldilands, and the other Creditors of Scott of Harwood, and Sir William Ker of Greenhead, and the other real Creditors infesters, on the other hand, mentioned 19th February 1686 ; and assoilyied the real Creditors from the reduction on the Act of Parliament 1621, because, though they were the bankrupt's near relations, and amongst them had got dispositions *omnium bonorum*, and had prevented other diligences, yet the dispositions were but partial, and not granted all at one time ; and he was not under horning and inhibition at the pursuer's instance ; and no contrivance, machination, or concealment was proven ; and it appeared he was then esteemed solvent, and got credit in the country, and was Sheriff-depute of Roxburgh at the time.

*Vol. I. Page 480.*

1686 and 1687. PATRICK ARCHIBALD *against* ROBERT TURNBULL and BURN'S and NEILSON'S RELICTS.

1686. *March* 30.—PATRICK Archibald, factor in Bordeaux, against Robert Turnbull, merchant in Edinburgh, and Burn's and Neilson's Relicts. The Lords, on Forret's report, having advised the fitted account, and the merchants' report, they approved of George Galbraith's and Harry Joussie's report, except as to the goods sold to Oswald, which did come home after the merchant's death : as to which they only allow the price paid for the said goods by James Oswald ; and ordain Jameson, who, as trustee, delivered the said goods to Oswald and Margaret Wallace, to order the payment of them to the pursuer ; and discern the representatives of the said Alexander Burn and John Neilson to make payment to the pursuer of the respective sums, as the price of the wines he sent home to their husbands, as the same is stated in the above written report ; and allow the pursuer to insist either before the Lords, or any inferior court, for proving the passive titles against them, as he thinks fit. *Vide* 22d June 1687.

*Vol. I. Page 412.*

1687. *June* 22.—Patrick Archibald, factor at Bourdeaux, as donatar to the escheat of Burn and Neilson, to whom he had furnished wines, as mentioned 30th March 1686, pursues an improbation against Robert Turnbull, merchant in Edinburgh, of a disposition made to him by the said Burn and Neilson, on this ground, That though the disposition bears to be of a day's date prior to Burn's and Neilson's denunciation to the horn, at Rutherford's instance, on

which Archibald's gift of escheat proceeds, yet it is truly ante-dated, and made of this false date of purpose to defraud and evacuate the Fisk; as appears by the subscribed account to which the disposition is made relative, as its onerous cause, where Rutherford's article of debt is stated, and his assignation to the caption, on the 8th of January, and yet, by the caption and assignation produced, it appears they are not till the 10th of January.

ANSWERED,—This is but a mistake, and was so inserted in the account, because it was intended presently to be done, the parties having agreed. But if there had been an agreement, the caption needed not to have been taken out.

The Lords, on Carse's report, before answer, ordain the witnesses in the three dispositions and fitted account, and witnesses at the communings, to be examined anent the true dates of the said dispositions and fitted account, and anent what they knew was *actum et transactum* the time of subscribing, or at any other time anent the said matter, upon pertinent interrogatories to be given in by either party; and granted diligence for that effect. *Vide* 23d November 1687. *Vol. I. Page 459.*

1687. November 23.—The Lords having advised the probation betwixt Patrick Archibald and Robert Turnbull, in the case mentioned 22d June 1687; the Lords found the account not probative, and therefore that it cannot be sustained as the onerous cause of the disposition. For the Lords thought, that since the verity of the account was redargued in that particular of Rutherford's debt, *corruere debet tanquam falsum in toto*. Some were for remitting Turnbull to the criminal court; but the Lords found the account only not probative.

Turnbull gave in a bill, bearing, that he needed not say the account was the onerous cause of his two dispositions; because, having received the dispositions from a stranger, mentioning onerous causes, the narrative proved sufficiently without any thing farther. ANSWERED,—*1mo*, He had produced this account as the onerous cause of his disposition. *2do*, The dispositions being *in lecto*, he could not then prejudge this pursuer and his other creditors by gratuitous dispositions; and so he must instruct the onerous cause wherein he was creditor. And Patrick offering to prove Turnbull paid, by the debit side of that account; it was alleged he could not use it, because he had quarrelled it, and it was found not probative.

The Lords having advised this, on Carse's report, upon the 14th of February 1688, they found that Robert Turnbull might astruct the onerous cause of the disposition by the bonds produced. And likewise found, that, albeit the fitted account produced by Robert Turnbull was found not probative, as being ante-dated, that Patrick Archibald might found upon and make use of the discharge contained in the same fitted account, for proving Robert Turnbull's intromissions with the sums therein mentioned; he adminiculating the same, either by Robert Turnbull's oath, or by witnesses, that Robert Turnbull did intromit with these sums. *Vol. I. Page 482.*