

*lorem*, it will be a great detriment to creditors and hinder confirmations; and, where the disponent becomes bankrupt, having no other means, the daughter cannot prefer the creditors at her pleasure, and therefore a disposition of all the disponent's estate for payment of particular creditors, was not found to prefer these creditors to others left out, in the case of a disposition to Kinfawns by his nephew, No 29. p. 900, and of a disposition to Mr George Blair by his nephew, No 14. p. 889; albeit the debts in these dispositions were equivalent to the worth of the lands disposed; and albeit the act of Parliament 1621, against fraudulent alienations of bankrupts, allows the payment made by interposed confident persons to the bankrupt's creditors before diligence done by other creditors, yet it disables the bankrupt to prefer one creditor to another; and, when the disponent is notour bankrupt, as he must become by disposing his whole means, the LORDS, as in the former cases have found, that the interposed persons could not prefer one creditor to another. It was *sexuplied*, That in both the cases alleged, the price was in the purchaser's hand, and therefore was ordained to be applied to the whole creditors more than the disposition, and left out according to their diligence, but where no diligence was done, the acquirer could not know whether they were creditors left out, or not.

No 42.

THE LORDS found the disposition by the father to his daughter conform to her contract of marriage was not fraudulent, although thereby she became obliged for her father's debt *quoad valorem*, and found she was not vitious intrmitter, though she was obliged to confirm, and had confirmed; and found, that having paid her father's lawful creditors *bona fide*, before any diligence done upon the defender's clause of warrandice, although she paid without sentence, that she was not liable to satisfy the clause of warrandice, which would infer double payment.—See PASSIVE TITLE.

*Fol. Dic. v. 1. p. 274. Stair, v. 2. p. 873.*

1683. January 10.

GALLATLY against SCOT.

GALLATLY having pursued Skeen, as executor to the deceased Bishop of Caithness, for payment of a debt due by the Bishop; and Skeen having *alleged*, That the inventory of the testament was exhausted by payment to the Bishop's relict, in implement of her contract of marriage, and, it being *replied*, That since there was no diligence done, nor sentence recovered against the executors, they ought not to have made voluntary payment for exhausting the inventory, to the prejudice of the pursuer;—THE LORDS sustained the payment made to the relict for implement of her contract of marriage, in respect they found, that as to the executor, it was a preferable debt, without necessity of a sentence. *Nota*, It hath been otherwise decided in January 1688.

No 43.

An executor may pay a preferable debt without sentence.

*Pres. Falconer, No 41. p. 22.*