

After advising a reclaiming petition for Sir William Forbes and Company, with answers, the LORDS altered the judgment pronounced by the Lord Ordinary; and found, That the granting of the promissory note by the bankrupt did not fall under the statute of 1696.

No 224.

It seemed to be the opinion of the Court, that if there had been any concert between the parties, for the purpose of giving a preference to Sir William Forbes and Company, in consequence of the vendition granted to the person who had interposed as cautioner, the judgment of the Lord Ordinary might have been sustained; but no agreement of this kind appeared. And although Sir William Forbes and Company, or their agent, might have been informed of the bargain between the cautioner and the bankrupt, this did not derogate from the validity of the agreement between Sir William Forbes and Company and the cautioner.

A reclaiming petition was afterwards preferred for the trustee on Swinton's sequestrated estate, and refused without answers.

Lord Ordinary, *Monboddo*.
Clerk, *Home*.

Act. Maconochie, Mat. Ross.

Att. Solicitor General.

Fol. Dic. v. 3. p. 62. Fac. Col. No 116. p. 220.

Graigie.

S E C T. VIII.

Effect of Reduction on the act of 1696.

1696. December 16. CREDITORS of HUNTER, Competing.

It is held in the case from Fountainhall between these parties, of this date; No 124. p. 1023. that the word *declare* in the act of 1696 does not import a retrospect.

No 225.
This act has
no retrospect.

Fol. Dic. v. 1. p. 81.

1704. December 1. JAMES MAN *against* ALEXANDER REID and Others.

JAMES MAN, as a creditor to Wales; arrests in the hands of Reid and others, and pursues a furthcoming, libelling the quantity and value of goods belonging to the common debtor intronitted with by the defenders. It was *alleged* for the defenders denying the libel, That any intronission they had was by virtue of a prior and preferable title. THE LORDS ordained the defender to depone, *ut constat de debito*; and sustained the defence, that the intronission was by virtue of a preferable title.

No 226.
A disposition
by a bank-
rupt to a cre-
ditor being
reduced on
the act 1696,
and that cre-
ditor have
done no di-
ligence, (as
others had