

was ever to be expected, and consequently the Incorporation would in effect end or die out with the present members, if these small contributions, for the use of their poor, were to be for ever mortgaged for the use of the creditors. And as to trustees being declared free of omiffions, the Lords seemed not to approve of their former decision, in the case of the Creditors of Ouchtertyre, mentioned in No 245. p. 1209. where it was found, on that very ground, that the trustee was declared free of omiffions, that the creditors were not bound to accept. They now considered such clauses to be common and ordinary in trust-rights, and that no trustee will be found who will accept on other terms; and that the trust may be transferred to another where he is observed not to act carefully.

No 246.

And, on these considerations, the LORDS sustained the disposition, and preferred the trustee to the arrester. See SOCIETY.

Fol. Dic. v. 3. p. 66. Kirkerran, (BANKRUPT.) No 6. p. 52.

1749. February 22.

The CREDITORS of BALMAGHIE against WILLIAM M'GHIE.

ALEXANDER M'GHIE of Balmaghie disposed his estate to trustees, providing that they should be obliged to hold compt for their intromissions to his creditors, so often as they should be desired; and to him for the superplus of what money should arise from the sale of the foresaid lands, if any were, after payment of the debts. And they disposed it to William M'Ghie merchant in Edinburgh, in the same terms.

No 247.
An estate adjudged, without regard to a previous disposition to a trustee for behoof of the creditors at large.

Robert Garment merchant in Kirkcudbright, in right of several debts contracted since the disposition, obtained an interlocutor of an Ordinary, adjudging the estate,

Pleaded in a reclaiming bill for William M'Ghie. The debtor was divested of the estate, before contracting the debts, for which the adjudication is craved; and his creditors cannot affect any thing which does not belong to him: He has only a right to have the superplus of the value accounted for; and this they may affect. An adjudication of the estate is not competent, as it is not now in the debtor's power to offer a part equal to the sum; and yet this is a right competent to him, wherever there is room for an adjudication.

THE LORDS adhered.

Petit. H. Home.

Fol. Dic. v. 3. p. 63. D. Falconer, v. 2. No 60. p. 64.