

he assigned over his debt to a trustee, who thereupon used an arrestment in his, Mr Beatt's, own hands.

In consequence of these arrestments, a multiple-poining was brought by Messrs Beatt and Love, which was conjoined with Mr Jamieson's process before the Sheriff.

In this process, Mr Jamieson *contended*, That the whole creditors ought to be ranked *pari passu*, in terms of the trust-right: The arresting creditors, on the other hand, *maintained*, That the trust-right was void or reducible upon the act 1696; and the Sheriff pronounced an interlocutor, finding it proved, that Mr Digges was bankrupt at the time of granting the trust-deed, and therefore preferring the arresting creditors, according to the priority of their diligence.

Mr Jamieson obtained an advocacy; and, besides *insisting* upon the common topics in favour of trust-deeds executed for the behoof of creditors in general, he further *pleaded*, as a circumstance of considerable weight, That the sum in dispute did not exist at the date of the trust-deed, and therefore was not subject to the diligence of creditors, and that it was created by means of the trust-deed and *supersedere*, and owed its being and existence thereto.

The Lord Auchinleck, Ordinary, after pronouncing some interlocutors, took the cause to report, and the following judgment was pronounced:

THE LORDS having considered the terms of the trust-disposition; the particular state of the funds assigned depending entirely on the creditors acting in concert; and David Beatt's letter; they prefer Mr Jamieson on the trust-right, he being accountable to the whole creditors of Digges, *pari passu*; and decern in the preference, and against the raisers of the multiple-poining accordingly.

For the trustee, *Walter Stewart*. For the arresting creditors, *David Rae* Clerk, *Honle*.

Fol. Dic. v. 3. p. 65. Fac. Col. No 120. p. 280.

A. Wight.

1764. November 14. MUDIE against DICKSON and MITCHELL.

STRAHAN failing in his circumstances, executed a trust-disposition to some of his creditors of all his subjects, for behoof of his whole creditors. The trustees took possession, and sold the subjects; but before proceeding to a division of the value, they were stopped by Elisabeth Mudie, the sole non-acceding creditor; who had charged Strahan with horning three days before the date of the trust-disposition, raised caption, and obtained several executions of search against him, all within 60 days of the date of the disposition; upon which, this creditor now pursued a reduction of that deed, and a furthcoming upon arrestments which she had used against the trustees, and fundry debtors of the common debtor.—It was chiefly *insisted* for the trustees, in bar of these actions, That the act 1696 was intended solely to prevent partial preferences, and not to invalidate general dispositions for

No 252.
A disposition
*omnium bono-
rum*, found
ineffectual to
prevent dili-
gence.

No 252.

the good of the whole creditors; and that, supposing the disposition were to be reduced, the pursuer would not, on that account, be entitled to a preference, as the rest of the creditors had been prevented from using the same diligence which she had done, from an opinion that the disposition was a sufficient security.—The trustees insisted, That at least they were entitled to retain the subjects, or prices thereof, of which they were lawfully possessed, for their own behoof, and that of the other creditors, before the period of the pursuer's arrestments.—*Answered*, That the debtor was rendered bankrupt precisely in terms of the act; and the disposition being to the prejudice of the pursuer's lawful preference, was reducible upon that act; that the trustees and other creditors had themselves to blame, as they trusted to an illegal deed.—THE LORDS reduced the disposition, and preferred the pursuer, in virtue of her diligence, to the effects in the hands of the trustees.

See This Case at large, No 179. p. 1104.

. See M'Kell against M'Lurg, No 21. p. 894.

1767. January 27.

THOMAS and ALEXANDER PETERS, Merchants in Glasgow, against ALEXANDER SPIERS, ANDREW BLACKBURN, and Others, Trustees for JAMES DUNLOP, Merchant in Glasgow.

No 253.
A disposition by a bankrupt, to trustees, for behoof of his creditors, does not prevent creditors, not acceding, from attaching their debtor's effects, by diligence.

IN July 1763, the ship *Betsy* arrived at Greenock, loaded with tobacco, chiefly on account of James Dunlop merchant in Glasgow; but having on board 16 hogheads tobacco, for behoof of Messrs Thomas and Alexander Peters.

Mr Dunlop having gone to Greenock, on purpose to enter his tobacco, Messrs Peters wrote him, desiring he would enter their tobacco at same time with his own; the entry was accordingly made, and the entry-duties repaid to Mr Dunlop by Messrs Peters, who not being able to obtain from Mr Dunlop either their tobacco or its value, brought an action against him, concluding either for delivery of the tobacco, or payment of L. 250 Sterling as the value. And, upon the dependence, they, in September 1764, arrested in the hands of Josiah Cortin, collector of the customs at Port-Glasgow, as debtor to Dunlop.

In November 1763, Dunlop executed a disposition of his whole estate, real and personal, in favour of Messrs Spiers, Blackburn, and others, as trustees for behoof of his creditors; and, a few days after executing this trust-deed, Dunlop was rendered bankrupt, in terms of the act 1696 by diligence executed by the direction of the trustees, in order to prevent any undue preference among the creditors.

The Messrs Peters having obtained decret against Dunlop, brought a process of furthcoming against Cortin, who appeared, and acknowledged, that at the time of Messrs Peters arrestment, he had in his hands L. 291 : 16s. belonging to