KENNET. Purchasers nowise partakers of the fraud are safe; but Livingston is not a purchaser. The *onus probandi* on the objector, and he may cut down the bond by the same evidence that might have been used to astruct it.

1766. *July* 30. JAMES MACKELL in Trochiehouse *against* The OTHER CREDITORS of ANTHONY M'LURG in Craignell.

BANKRUPT.

Where the case of an Insolvent Debtor does not fall under the Acts 1621 or 1696, a trust-disposition granted by him for behoof of his whole creditors, found effectual.

[*Sel. Dec. No.* 249; *Dictionary*, 894.]

IN December 1762, Anthony M'Lurg in Craignell became bankrupt. Most of his creditors granted him a *supersedere*, on a narrative that they and he had chosen certain trustees for the management and disposal of his stock, tack, and other moveables. To this deed M'Kell, a creditor of M'Clurg in L.51, is no party. On the 8th February 1763, the bankrupt, in prosecution of this plan, granted a trust-disposition to the foresaid trustees. M'Kell obtained decreet against M'Lurg for the L.51 sterling, and arrested in the hands of one M'Clamerock: he also obtained decreet of forthcoming against M'Clamerock, as debtor to M'Clurg. M'Clamerock suspended, and pleaded that he owed nothing to M'Clurg, but that he had bought goods from the trustees of M'Clurg, which had belonged to him, and, on delivery, became bound to pay the price to them. M'Clamerock also raised a multiplepoinding, wherein he called both M'Kell and the trustees, to dispute their preferences.

ARGUMENT FOR M'KELL, THE CHARGER:—

The validity of trust-dispositions, like the present, has been often under consideration of the Court. In the case of *Snee* against *The Trustees of Anderson*, *12th July* ——, the Court set aside a trust-disposition from a bankrupt—and found "that no disposition by a bankrupt debtor can disable creditors from doing diligence." See *Dictionary*, *Vol. I. p.* 85. The like judgment was pronounced *Earl of Aberdeen* against *The Trustees of Blair; 3d February* 1736. The general point was again solemnly decided in 1765, *Moodie* against *The Trustees of Strachan*. This decision proceeded not on the specialty that Strachan was bankrupt in terms of the Act 1696, but was pronounced upon the general principles established in the case of *Snee*. As, therefore, the charger did not accede to the trust-disposition, he cannot be thereby precluded from doing diligence and effectuating payment.

ARGUMENT FOR THE TRUSTEES OF M'CLURG, appearing in the multiplepoinding:—

The disposition in question is not liable to any challenge, either at common law or upon statute. At common law, total alienations made to particular creditors, in prejudice of others, are reducible; but here the alienation is made

for behoof of the whole creditors. The statute 1696 can have no place here; for M'Clurg, the insolvent, was never a notour bankrupt, in terms of the statute. Neither can the statute 1621 have place here. The disposition does not fall under the first clause, for there is no gratuitous alienation in defraud of creditors; nor under the second, for M'Kell had done no diligence. The decisions then quoted for M'Kell are foreign to the cause: in all of these cases the debtors had become bankrupt, in terms of the statute 1696. The Court has never found that *all* dispositions granted by a person insolvent for the behoof of *all* his creditors are reducible: nor has the Court found that the effects of the bankrupt, when converted into money by the trustees, are affectable by creditors not acceding to the trust-right. A person, who is not a notour bankrupt, and whose creditors are not in course of diligence, may deliver part of his effects, *in solutum*, to any of his creditors at an adequate price: he may also convert his effects into cash, and pay off as many creditors as he can. If his whole effects consist in bills, he may indorse those bills to his creditors, when, as here, the statutes 1621 and 1696 lay him under no disability. Such being the case, why may he not assign over all his effects to trustees for the benefit of his whole creditors? Although it should be admitted, that creditors not acceding may do diligence, yet this will not benefit the charger, for that such diligence can never go farther than to affect the share allotted to them by the trust-right. With respect to the shares allotted to the acceding creditors, the property is transferred to them as soon as it is vested in their trustee. Such is the case here, and the charger may draw his share, either under his arrestment or under the trust-right, as he thinks best.

On the 25th February 1766, the Lord Kaimes, Ordinary, "In respect that, when James M'Kell arrested in the hands of Andrew M'Clamerock, as debtor to Anthony M'Clurg, the said Andrew was not debtor to M'Clurg, but to the trustees for his creditors, who sold the stocking to him and took the price payable to themselves for behoof of the creditors,—therefore prefers the trustees to the sums in the hands of the pursuer of the multiplepoinding, and decerns in the preference, and against the pursuer for payment accordingly."

On the 18th June 1766, the Lord Ordinary "adhered, reserving reduction of the trust-right as accords."

On the 30th July 1766, the Lords, upon advising petition and answers, "adhered."

For the charger, J. M'Claurin. *Alt.* G. Wallace.

OPINIONS.

KAIMES. I only determined upon the rights as they stood, reserving reduction.

PITFOUR. An error in point of law on the part of the petitioner. Although a reduction of an equal disposition by a bankrupt be allowed, that has no relation to the Acts 1621 and 1696. A person not a bankrupt may divide his funds among his creditors. So it was determined, *November* 1744, in the case of *Bert's Creditors*. As to the case of *Moodie*, it went entirely upon the Act 1696, although the charger says otherwise.