

1767. *January 22.* THOMAS and ALEXANDER PETERS, *against* ALEXANDER SPEIR, and OTHERS.

BANKRUPT.

A disposition to trustees for behoof of creditors, does not hinder creditors not acceding from using diligence against the effects.

[*Faculty Collection, IV. p. 98 and 389; Dictionary, 1218.*]

JUSTICE-CLERK. The general question as to trust-rights here occurs. I always had a repugnance to the late decisions. The spirit of the Act 1696, favours such disposition for behoof of creditors.

AUCHINLECK. Trust-rights were once much favoured, but they were found to be attended with worse consequences than those attending the common course of diligence. When I lend my money, the diligence of the law is my right. If any one creditor makes his debtor bankrupt, all the creditors must benefit by it.

KAIMES. If a man makes a disposition equally to all his creditors, this does not come under the bankrupt Acts; but here the disponent is bankrupt,—he cannot tie up the hands of his creditors, nor name a mandatar for them. The trust-right is not to be cut down *funditus*, only the nomination of the trustee to be set aside.

PITFOUR. The Act 1696, only forbids deeds granted in preference: If there is a disposition to six creditors it is good, because this may prevent the expense of an adjudication. If a bankrupt disposes to a trustee for all his creditors, and also binds the trustee to denude, in case the creditors choose, no objection will lie against the deed.

COALSTON. It is of great moment to put creditors upon an equal footing. A disposition to all creditors is lawful,—to trustees, may be unlawful, either by giving too much power to the trustee, or by tying up the creditors from doing diligence.

PRESIDENT. If the late decisions are to be overturned, there is nothing certain in law.

COALSTON. I also question how far any thing can be taken by the arrestments. The Crown might have retained; how far can it part with that right to the prejudice of one of the partners?

PRESIDENT. Corthine lodged the money, and took the bill at his own risk; so that the debenture is out of the question.

KAIMES observed,—That the interlocutor does not reduce, which form required.

The Lords adhered to Lord Barjarg's interlocutor.

Act. A. Wight. Alt. W. Wallace.

Non liquet, Kaimes, Coalston.

Affirmed on appeal.