

1779. *January 22.* CREDITORS OF MESSRS COLVILLS *against* the TRUSTEE.

THE LORDS again found, as in many former instances, (*supra*) that it was no sufficient objection against the proceeding of an adjudication against a debtor's estate, that he had previously granted a disposition *omnium bonorum*, in favour of a trustee for his whole creditors.

*Fol. Dic. v. 3. p. 67.*

\* \* \* The particulars of this case have not yet been reported. See APPENDIX to this Title. See General List of Names.

No 255.

1791. *December 8.*

ANDREW HUTCHISON, *against* The CREDITORS of JAMES GIBSON.

GIBSON, who had become insolvent, but was not bankrupt according to the terms of the statute of 1696, offered to make over his funds to his creditors in a body. This offer they having accepted at a regular meeting, he granted to two of their number, named by them as trustees for the whole, a disposition of all his effects, which were chiefly household-furniture, and in value much inferior to the amount of the debts.

The trustees received the possession of the goods, and had just completed a sale of them by public auction, when Hutchison, a creditor who dissented from the rest, used arrestment in the hands of the purchasers at the roup, and of the auctioneer. In a competition which afterwards took place between him and the trustees, he disputed the validity of this trust-deed, as being a disposition *omnium bonorum* by an insolvent debtor. In support of the objection, it was

*Pleaded:* No man is entitled to usurp a power over another's rights. Hence, whenever a man knows himself to be irretrievably insolvent, it becomes unlawful for him to exercise a single act of property, by which the situation of any one of his creditors may be altered in the least; because, by so doing, he necessarily infringes rights with which he ought not to interfere. Among these, one is the right of any creditor to obtain a preference, by a vigilant use of the legal means; and therefore a debtor, in such a situation, cannot lawfully, by a disposition *omnium bonorum*, or any other act, deprive the creditor of this advantage; which, it may be remarked, is signified by the appropriate expression, *vigilantibus jura subveniunt*.

This principle is evinced by the statute of 1696, which defines the circumstances of that insolvency, which justice must ever render a bar to the disposal of property. But it does not itself create that bar; otherwise it would enact that which is positively unjust.

Nor can the concurrence of any majority of creditors give validity to an act of the insolvent debtor, tending to alter the relative situation of any individual without his consent; for creditors are regarded as independent of each other, and not as a collective body or society.

No 256.

A disposition *omnium bonorum* by a person insolvent, but not under the description of the act 1696, to a trustee for behoof of his creditors, named by a majority of themselves, found to be valid and effectual.