

1783. June 25. EDWARD YOUNG *against* ROBERT JOHNSTON.

JOHNSTON was a creditor of Thomas Turnbull, who afterwards became bankrupt. George Turnbull, brother of Thomas, having joined with him in granting a bill to Johnston for the debt, Thomas, not long before, or about the time of his bankruptcy, put into the hands of George a parcel of wool, which the latter conveyed to Johnston, who, in return, delivered up to him the conjunct bill.

Young, as trustee for the creditors of Turnbull, brought an action of reduction of this transaction, upon the statute of 1696.

The Lord Ordinary gave judgment in terms of the libel.

In a reclaiming petition presented to the Court, Johnston argued as follows: It is clear, that the sanction of the statute does not reach to payments in money made by insolvent persons, to their creditors. Supposing then that even Thomas Turnbull, the bankrupt, had sold the wool in question to the petitioner, for cash instantly paid to him, and had repaid that cash *in solutum* of the debt, the transaction would have been unchallengeable: a case which would have differed in nothing from that of the delivery of the wool *in solutum*, except in the omission of the truly insignificant ceremony of giving, and immediately receiving back the money: so that the latter bargain could not have been challenged more than the former; July 21. 1758, Grant *contra* Smith, No 154. p. 274. of Fac. Col. *voce* PACTUM ILLICITUM. In fact, however, the goods were not received by the petitioner from the bankrupt; but it was George Turnbull, who had himself either bought them, or had obtained them for his relief, who sold them to the petitioner for a fair and adequate price; which price was the bill granted by himself, as well as by Thomas, the bankrupt. If, however, it should be said that the previous conveyance by Thomas to George was invalid, the answer would be, that *mobilis non habent sequelam*, and that a purchaser is not to be affected by the prior transactions of the seller. This consequence indeed is expressly guarded against by the statute 1621, c. 18.

The Court seemed to consider the specialties of this case, as of no importance; and, in general, observed, that, if the plea, of goods having been delivered *in solutum*, and not in security, were to be admitted in support of such a conveyance as that in question, it would be easy in any case to evade the salutary regulations of the statute 1696.

THE LORDS therefore refused the petition without answers.

A second reclaiming petition was presented, which, so far as respected the above point, was likewise refused without answers.

Lord Ordinary, *Westhall*.

For the petitioner, *Geo. Wallace, Henry Erskine*.

*Fol. Dic v. 3. p. 55. Fac. Col. No 109. p. 172.*

*Stewart.*

No 203.

A debtor, about the time of his bankruptcy, delivered to his cautioner in a bill, a parcel of wool. The cautioner gave the wool to the creditor; and got up the bill. The transaction reduced.