

No. 9.

But the Court, at advising a petition with answers, on the grounds stated for the creditors, preferred the trustee.

Lord Ordinary, *Craig*. For Sinclair, *Maxwell Morison*. Alt. *Ja. Ferguson*. Clerk, *Pringle*.

D. D.

*Fac. Coll. No. 88. p. 203.*

1799. November 12. THOMAS MITCHELL *against* MARJORY FINLAY.

No. 10.

The act 1696, C 5. found not to apply to a wife's infefment on an antenuptial marriage contract, by which the husband had become bound to give her infefment on a house and yard for her life-rent, in case of survivancy; although he was not himself infeft for two years after the date of the contract, and his own and his wife's infefment, both taken on the same day, were within sixty days of his notour bankruptcy.

By an antenuptial marriage-contract, James Milne became bound to give Marjory Finlay infefment on a house and yard belonging to him, but in which he was not infeft, for her life-rent, in case of survivancy.

James Milne did not himself take infefment for above two years after His wife was infeft upon the clause in the contract, on the same day with himself.

He became notour bankrupt within a month after the infefments.

Thomas Mitchell, one of his creditors, brought a reduction of the obligation to infeft in the contract, and of the infefment taken on it, founded on the act 1696, C. 5.

The Lord Ordinary assoilzied the defender.

In a petition, the pursuer admitted, that in the case Jan. 29, 1751, Johnston, No. 200. p. 1130. (contrary to the older case, June 10, 1731, Creditors of Merchiston, No. 261. p. 1233.) it had been found, that infefment on an heritable bond, granted for a *novum debitum*, though taken within sixty days of bankruptcy, does not fall under the act 1696. But, he contended, that in that case there had been no undue delay in taking infefment; and, at least, much less than in the present, where there was reason to presume it had been postponed intentionally, till the husband was on the eve of bankruptcy.

The pursuer further contended, that Milne's own infefment, which was necessary to support the defender's, being a voluntary act on his part, was struck at by the statute; June 5, 1793, Brough's Creditors against Spankie and Jollie, No. 222. p. 1179.

Observed on the Bench: The defender was entitled to complete the security, by expeding infefment in her husband's person as well as her own; and therefore this is not to be considered as the act of the husband.

The petition was refused without answers.

Lord Ordinary, *Craig*. For the Petitioner, *Gillies*. Clerk, *Hume*.

D. D.

*Fac. Coll. No. 140. p. 315.*

1800. May 21.

THE TRUSTEE FOR THE CREDITORS OF ROBERT MACLAGAN, *against* DOCTOR MACLAGAN.

No. 11.

A person in apparenay, having grant-

ROBERT MACLAGAN had right to the fee, and his mother to the life-rent, of certain heritable subjects, to which they had not made up titles.