

ditors, without the expensive circuit of legal conveyances by adjudications, pointings, and furthercomings; and, at the same time, to preserve an equality amongst them. This being the only possible design and consequence of such a disposition, it is submitted, if it can in any sense be reckoned prejudicial to one or all of the creditors. It is true, such a disposition does prevent the benefit that might arise to one creditor, by outrunning another in the course of his diligence, and the *little arts* made use of for that purpose: But sure, being deprived of this dishonest advantage, this *turpe luerum*, can never be construed in law a damage, or such a *prejudice* as to found an action of reduction.

As to the *second* point in the arrester's pleading, touching *the necessity of acceptance*: The assignees admit, that the objection would have its weight, if the case were to be determined by the Roman law, where a disposition, till accepted by the disponent, conveys no right. But we follow not the Romans in this matter: We hold, that a disposition in any person's favour needs no acceptance, but that it directly establishes the right in him, even in his absence, and without his knowledge: Yea, so certain is this, that in a deed betwixt two, a right may be established in favour of a third, without his knowledge or concurrence, which it shall not be in their joint powers thereafter to recal. Thus, in the present case, the assignation, when intimated in the creditor's name, fully transferred the debt in their favour; which could not be destroyed, but by their positive rejection of the right. The assignees need not go about to establish this by authorities or decisions; it is a principle in our law, and so laid down by Lord Stair in his Institutions, L. 1. tit. 10. § 4. & 5.

The Lords found, That a disposition simple, unqualified, and completed by a bankrupt in favour of his whole creditors, was not reducible upon the act 1696, at the instance of a posterior arrester.

Fol. Dic. v. 1. p. 85. Rem. Dec. v. 1. No 61. p. 117.

* * The same was found in the case, 25th July 1726, Competition of Eymouth's Creditors, *voce* COMPETITION.

1727, January.

BELL of Craigfordy *against* The TRUSTEES for BARCLAY'S CREDITORS.

AN estate was disposed to Barclay, under burden of the debts of the disponent, Barclay having become bankrupt, conveyed this estate to trustees for behoof of his creditors. In the trust-deed, no provision was made for payment of the debts of the original disponent. The deed contained a submission by the creditors to arbiters named by the bankrupt.

Bell, a creditor of Barclay's author, proceeded to adjudge.

Barclay's Trustee opposed the adjudication; but the Lords decerned.

* * This case is mentioned in the session-papers of the case Cheyne against Merchiston's Creditors, No 240. p. 1204.; where it is said in the petition for the

No 239.

Ad adjudication allowed to proceed, notwithstanding of a disposition *omnium bonorum*.

Creditors, that ‘ the Lords were unanimously of opinion in Barclay’s case, upon
 ‘ the general point, that it being an useleſs diligence ought to be ſtopped ; and
 ‘ that though adjudication paſſed, it was purely upon account of this ſpecialty :
 ‘ That Bell was a creditor of Robert M’Lellan’s, who had diſponed his eſtate to
 ‘ Samuel (Barclay) with the burden of his debts ; and Samuel being bankrupt,
 ‘ diſponed that eſtate to his creditors, without ſaving the preference of Robert’s
 ‘ creditors, and brought them in only with his own, and obliged them all to ſub-
 ‘ mit to arbiters of his chuſing. Mr Bell being a creditor of Robert’s, and hav-
 ‘ ing uſed inhibition, was preferable to the creditors of Samuel, whoſe very right
 ‘ was burdened with Robert’s debts. It was purely on that account that the ad-
 ‘ judication was allowed to paſs. The diſpoſition by Samuel was reducible, at
 ‘ Bell’s inſtance, as cutting off his certain preference. Had it not been for this
 ‘ *ſpecialty*, the Lords were unanimously inclined to reſuſe the adjudication.’

In the answers for Cheyne, it is ſaid, ‘ The ſpecialties mentioned in the peti-
 ‘ tion are nothing to the purpoſe ; for albeit Bell, who craved the adjudication,
 ‘ was a creditor of Robert M’Clellan’s, who had diſponed his eſtate to Samuel
 ‘ (Barclay) with the burden of his debts ; and that Samuel being bankrupt, con-
 ‘ veyed the eſtate to his creditors, without giving a particular preference to Ro-
 ‘ bert’s creditors ; yet ſtill it was open to Robert’s creditors, in the ranking be-
 ‘ fore the arbiters, to claim their preference upon their rights, as much as it was
 ‘ competent, to any other creditor, to claim his preference according to the na-
 ‘ ture of his right and diligence ; ſo that here there was no iniquitous condition
 ‘ impoſed upon the creditors of Robert, more than what aroſe from the general
 ‘ nature of the thing, and the law of the land, in denying a perſon acceſs to a
 ‘ diligence authoriſed by public law, in which he confiſed more than in the deed
 ‘ of a bankrupt, which may be ſubject to many objections, beſides that found
 ‘ on the act 1696.’

See *The Session Papers for 1729, in the caſe of Cheyne againſt
 Creditors of Merchieſton, in Advocates’ Library.*

1729. *January.*

MR JAMES CHEYNE *againſt* The TRUSTEES of MERCHIESTON’S CREDITORS.

A BANKRUPT having granted a diſpoſition *omnium bonorum* to his creditors, for
 their ſecurity and payment, one of them not ſatiſfied with the common fate, in-
 ſiſted in an adjudication againſt the bankrupt ; which was ſtrenuouſly oppoſed by
 the others, foreſeeing this adjudication would be uſed as a foundation for puſhing
 on a ſale of the debtor’s eſtate, which would heap a multitude of expences upon
 them, and tend, in general, to render of no effect, the method that has been of
 late fallen upon of granting diſpoſitions *omnium bonorum* : They *pleaded*, that this
 was an invidious diligence, and, in all events, their diſpoſition muſt be preferable ;
 whereby it will be impoſſible for him to make more by the adjudication than he

No 240.

The Lords reſuſed to ſtop an adjudication, purſued by a creditor chuſing to take ſeparate meaſures, in oppoſition to a diſpoſition *omnium bonorum*, to truſtees for the whole creditors.