

ance in favour of another. He was entitled to exercise his power in favour of certain creditors of the bankrupt. It does not alter the case, that infestment was taken in his name, without his knowledge. This does not constitute him a trustee for the common debtor. He cannot be put in a worse situation without his consent, therefore might lawfully use the infestment taken in his own name, as if taken by himself for his own behoof.

The Lords found the infestments granted by the author not reducible upon the act 1696.—See No. 207. p. 1150. See APPENDIX.

No. 36.

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1741. July 16. SPRUEL *against* SPRUEL CRAWFURD.

Found, That where a trust does not arise from any deed or disposition of the truster, but from the voluntary interposition of the trustee, as *negotiorum gestor*, the act of Parliament 1696, declaring trust no otherwise proveable than by oath or writ, takes not place.

*Kilkerran, No. 1. p. 581.*

No. 37.

In what cases the act 1696 takes place.

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1741. November 24. RANKINE and Others, *against* GAIRDNER.

Found, That where a disposition was granted to a trustee, with power to dispose of the subject, and to apply the price to the disponent's creditors, such trustee may lawfully pay *primo venienti*, the same being done *bona fide*.

*Kilkerran, No. 2. p. 581.*

No. 38.

Powers of a trustee for selling an estate, and paying creditors.

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1747. November 24.

The DUKE of HAMILTON'S CREDITORS *against* The TRUSTEES of the DUCHESS.

Charles Earl of Selkirk, in virtue of a commission from Anne Duchess of Hamilton, compounded with certain commissioners appointed by the French King, in consequence of the treaty of Utrecht, the right competent to the family of Hamilton upon the duchy of Chatelherault, for 500,000 livres, to be secured upon the Town-house of Paris at 4 per cent.

James Duke of Hamilton, son to the Duchess, having died indebted, she disposed to the Earl of Selkirk and Lord Pencaitland, jointly, and failing either of them, to the survivor, and failing both, to the heirs of tailzie in the estate of Hamilton, "as trustees for such of the said creditors as they should agree with, in manner and in the terms after-mentioned, the yearly rent and principal sums contained in the said contract, under the provisions and conditions after inserted;" which were, that they should apply what they recovered to payment of her own

No. 39.

A disposition to trustees for the use of the creditors of another than the disponent, with power to them to prefer such as they pleased, provided that none of the creditors should have right to affect the subject disposed, or