

prior debt due to Bowden; *ergo*, if it had been for a price paid by way of commerce, it would not have been reduced; neither, in the present case, does the homing used signify any thing; that being no proper diligence to interrupt disposal by sale, which only can be done by inhibition. *Lastly*, As the above decisions are *in terminis*, so has it never as yet been otherways found.

Replied for Brugh: That the reason why no decisions have occurred in the matter may be, that purchasers have been cautious how they bought from bankrupts, seeing the law is so clear against them; yet one there is, 23d February 1709, Hamilton against Sir James Campbell, where the voluntary assignation of this same Sir David Thoires is reduced upon the act 1621, (No 150. p. 1059.)

Duplied for Gray: That the decision did not meet; for there both parties were creditors to Sir David, and the assignation was for no price instantly paid by Hamilton, but for payment of a prior debt, and so fell under the last clause of the act of Parliament.

As to the act 1696, it was *alleged* for Gray, That it was plain, by the terms thereof, that it only concerned creditors.

Answered for Brugh: That he did not concern himself with the import of that particular clause in the act 1696, touching deeds done sixty days before bankruptcy, but that he founded on the general scope of the act to prevent such fraudulent alienations, and especially on the first clause thereof; which provides, that an insolvent debtor absconding, imprisoned, &c. shall be reputed notour bankrupt from the time of his imprisonment, &c.; and therefore no deed done by him can subsist in prejudice of his creditors; and this conclusion is more founded on the common principles of law and reason, than on this act, which seems to have taken that point for granted.

'THE LORDS preferred Alexander Gray, as having purchased *bona fide* for a just price, and not for satisfaction or security of former debts.'

Act. Boswell.

Alt. Dun. Forbes.

Clerk, M^r Kenzie.

Fol. Dic. v. 1. p. 83. Bruce, No 45. p. 60.

1728. February. CREDITORS OF GRATNEY, Competing.

AN apparent heir having granted infeftments of annualrent, thereafter granted a procuratory to serve himself heir, that his infeftment might accrefce to the annualrent rights. In a competition betwixt these annualrents, and posterior adjudgers, it was *objected* against the procuratory, That it was granted while the common debtor was a notour bankrupt, and therefore null by the act 1696; the design of which act is to annul every partial preference granted by a bankrupt, *directly* or *indirectly*, in favour of creditors.—It was *answered*, That the act mentions only *alienations* made by the bankrupt, and reaches not every deed, which

No 195.

Whether deeds are challengeable where nothing is given away, but yet a partial preference effectuated.

No 195. may any way be attended with a consequential damage or benefit to some of the creditors.—THE LORDS preferred the annualrenters.

Fol. Dic. v. I. p. 83.

1728. July 19.

SMITH *against* TAYLOR.

No 196.

A DEBTOR, within 60 days of his bankruptcy, delivered to one of his creditors, lint, dales, &c. in payment and satisfaction *pro tanto*.—Against a reduction upon the act 1696 it was *pleaded*, That the act reaches not moveables, the commerce of which ought to be free.—THE LORDS found the reduction relevant to oblige the defender to restore the goods or the value.

Fol. Dic. v. I. p. 83.

1729. February 4. ECCLES *against* CREDITORS of MERCHIESTON.

No 197.

THE narrative of an assignation by a bankrupt, bearing money instantly advanced; it was put to the assignee, whether it was not in security of a prior debt? He declared, that when he lent his money, it was covenanted that he should have the assignation, as part of his security; but when the money was lent, and the bond written out, the assignation was not ready, but that it was delivered to him about a week thereafter.—THE LORDS found the assignation fell under the sanction of the act of Parliament.

Fol. Dic. v. I. p. 83.

1733. January 25. BUCHANAN *against* BAILIE ARBUTHNOT.

No 198.

Payment in cash does not fall under the act 1696.

A NOTOUR bankrupt having assigned a bond to a trading company for ready money, and having applied some part of the price for payment of a private debt due by him to one of the company; and it being *contended* that this was truly a voluntary assignation for satisfaction of a creditor; *answered*, The assignation was to the company for ready money, and not reducible; and payment thereafter out of the price to one of the company, was the same as made to a third party, and therefore effectual, unless it could be said, that actual payment is reducible upon this act.—This case was found not to fall under the act 1696.

Fol. Dic. v. I. p. 82.

No 199.

Payment in cash cannot be reduced on either of the statutes 1621 or 1696.

1751. January 26. FORBES *against* BREBNER and Others.

GEORGE FORBES being creditor to David Farquhar in L. 193 Sterling, arrested in the hands of George Elmillie, and obtained decree of furthcoming for L. 94,