

No 228.

*Replied*, In our law, *facts* and *deeds* are reciprocal terms: The transference here objected to is an alienation, and a fact or deed, whether reduced to writing or not. No injury can happen to commerce; a fair purchaser, for a price, cannot be affected by the statute. Indorsements to bills are most of all favoured by commerce; yet they fall under the law, when granted for a prior debt. A sale, such as figured, intended to pay the creditor's debt, would be reducible as simulate. If the partial deed of the bankrupt be set aside, there is no foundation upon which the receiver of the goods can stand, in opposition to the pursuer, who has done legal diligence. The goods must be understood to remain *in bonis* of the bankrupt, subject to such diligence as has been led against them.

See Session-papers in Advocates' Library.

No 229.

1743. February 9.

CREDITORS OF HAMILTON against HENRY.

THIS act respects only preferences granted to *creditors of the bankrupt*.

See The particulars No 173. p. 1092.

1750. November 9.

THE EARL OF HOPETOUN, and other Creditors of JOHNSTON, against NISBET of Dirleton, and INNES.

No 230.

A case, in which is admirably stated, the construction of the act 1696, in general; and in particular with regard to the *criteria* of bankruptcy.

ALEXANDER INNES being creditor to James Johnston in L. 159 Sterling by bill, used diligence against him by horning and caption in June 1746; and Johnston being unable to pay, gave an heritable bond of corroboration, on the 17th July 1746, upon his houses in Edinburgh, upon which infestment was taken, 4th December 1746.

William Nisbet of Dirleton, being creditor to the said Johnston in L. 163 Sterling by bill, used horning and caption thereon, and imprisoned Johnston in the tolbooth of Edinburgh upon the 16th August 1746; but he having agreed to grant heritable bond to Dirleton on the said houses in Edinburgh, he was liberated upon the 20th or 21st of August, and immediately thereafter granted the heritable bond, whereupon infestment was taken on the said 4th December 1746. This heritable bond bore to be in corroboration of the debt and diligence, and by it Johnston became bound to pay the debt against the 20th September 1746. And it further bore this special *proviso*, That the granting the said security should not hinder Dirleton from using the foresaid diligence by horning and caption against Johnston, between and the said 20th of September, or at any time thereafter.

These securities remained a secret to the Earl of Hopetoun, who was a considerable creditor, till the infestments were taken; at which he being alarmed, certain treaties ensued; which proving ineffectual, the Earl, for himself, and others