

S E C T. III.

Of Partial Preferences by means of Interposed Persons.

1737. *June 21.* BEATON of Kilconquhar *against* M'KENZIE of Fraferdale.

No 207.

A preference obtained by means of an interposed person sustained; but the circumstances of the case are particular; and the soundness of the decision seems very doubtful.

ONE having purchased an estate, and taken a conveyance to his author's disposition, with procuratory and precept, and having thereafter been concerned in the rebellion 1715, his friends, while he was prisoner in England, thought proper to infeft the author, in order, if possible, to protect the estate from the government. The gentleman returning home without being attainted, contracted several debts, and conveyed to some persons, from whom he borrowed money, his author's precept for their security, not knowing that the same was exhausted, and infeftment taken upon it in the author's person. At last having died bankrupt, these creditors adverting to the mistake, applied to the author, and obtained infeftment from him; which being quarrelled upon the act 1696, as granted by a trustee, after the common debtor's notour bankruptcy, it was *answered*, The author was not here as trustee; the conveyance did not denude him of his personal right to the estate; he might have infeft himself, and made a second conveyance in favour of another; and it is no objection, that he has exercised his power in favour of the bankrupt's creditors; nor can it alter the case, that infeftment was taken in his name without his knowledge; this does not make him a trustee for the common debtor; he cannot be put in a worse situation without his consent; and therefore might lawfully use the infeftment taken in his name, as if taken by himself for his own behoof.—THE LORDS found the infeftments granted by the author not reducible upon the act 1696.

Fol. Dic. v. 1. p. 83.

S E C T. IV.

Title to pursue Reduction on the act 1696

1747. *November 17.*SHAW *against* HALL.

No 208.

A prior disponee, though uninfeft, entitled to chal-

RICHARDSON merchant in Kelfo having in his person several adjudications, whereon he had not obtained infeftment, when, in the year 1734, his affairs fell into disorder, conveyed these adjudications to Gabriel Hall his creditor, in security

of what he owed him; and as the law was at that time understood to stand, Hall was advised that Richardson's own right being personal, he was effectually denuded by the disposition; and accordingly, without using the precaution to obtain himself infest by the superior upon the adjudications, he entered into possession. But the memorable decision between Bell of Blackwoodhouse and Gartshore * supervening in 1737, Joseph Shaw another creditor obtained from Richardson, in 1740, a disposition to the same subjects, and obtaining himself infest upon the adjudications, and thereby acquiring a preference to Hall, as the law now is supposed to stand on the footing of that decision, pursued an action of mails and duties.

Gabriel Hall for his defence pursues a reduction of Shaw's right on the act 1696; on this ground, That Richardson was notour bankrupt at the date of the disposition to Shaw; the relevancy whereof was contested by Shaw on this ground, that his preference to Hall did not arise from his disposition from Richardson, to which Hall's disposition as prior was preferable, but from his infestment from the superior. That being the case, his infestment was not reducible upon the act 1696, as the Lords found January 1734, Creditors of Scott of Blair *contra* Colonel Charteris, *infra h. t.*

Answered, That it might be true, were Hall's allegiance no other than that Richardson the common debtor had become bankrupt within 60 days of Shaw's infestment, the case would not fall under the act 1696, as that infestment flowed not from the common debtor; and no more is determined by that decision. But here the allegiance is, that the common debtor was bankrupt at the date of the disposition to Shaw, which disposition to Shaw, Hall the first disponee was, as creditor to the granter upon the warrandice, entitled to reduce on the act 1696, and the disposition to Shaw being reduced, the infestment obtained upon the adjudications fell of consequence.

Which the LORDS 'sustained, and found the reduction competent.'

Eol. Dic. v. 3. p. 57. Kilkerran, (BANKRUPT) No 7. p. 53.

1783. November 19.

JAMES ROBERTON-BARCLAY, *against* WILLIAM LENNOX.

MR ROBERTON of Bedlay, in July 1778, granted an heritable bond to Mr Lennox of Woodhead, a creditor of his. Some time afterwards, Mr Robertson contracted debts to Mr Robertson-Barclay, and others.

Mr Lennox did not take infestment on his security, till 28th May 1779, and within less than *sixty* days from that date, Mr Robertson was rendered a *notour* bankrupt.

In the ranking of Mr Robertson's creditors, Mr Robertson-Barclay *Objected* to Mr Lennox's interest: The bond and infestment fall under the

No 208.

Challenges a second disposition, followed by infestment.

No 209.

An infestment found reducible under the act 1696, tho' the right on which it proceeded was anterior to the right of the creditor challenging.