

1696. January 9. SMART *against* DRYSDALE'S CREDITORS.

RANKEILER reported the competition between the creditors-adjudgers of the estate of James Drysdale merchant, against the other creditors, who claimed his tenements by virtue of a disposition from the common debtor, whereon they stood infest. Against this disposition the adjudgers repeated their reasons of reduction, viz. that Drysdale the granter, at that time was bankrupt, fled to the Abbey, and on death-bed; at which time a debtor is under an utter incapacity to convey any part of his estate, or rank his creditors, but ought to be left open to diligence, as creditors shall affect it.—*Answered*, The law only forbids in such cases fraudulent alienations, whereby one creditor by an unlawful gratification is preferred to another; but here is no manner of fraud, but a very honest design of the debtor, in disposing his whole estate in favour of his hail creditors, so there are none postponed nor defrauded, but all brought in *pari passu*; whereby they had a clear benefit, that it prevented their depurging large expences, in leading adjudications and accumulating other diligences.—*Replied*, We are not here to consider a seeming equality introduced among the creditors, but the precise ground in law is, that no deed of a bankrupt's *postquam cessit foro* and has fled, and creditors are *in cursu diligentie* against him, can subsist; but he must leave his estate to be affected by diligence, and creditors should not rely on such voluntary rights; and if they do, neglecting any farther diligence, and suffering others to anticipate them, *sibi imputent*; which has often been decided, Creditors of Tarperie, No 29. p. 900.; 29th June 1678\*, and 14th November 1679\*; and lately in the case of Langton's Creditors, No 140. p. 1054.; where the Lords made a difference between one insolvent and a bankrupt. In the first case, though the debts exceed the estate, yet if diligences be not at least inchoate against him, he may validly dispose; but in the latter case of a notour bankrupt under diligence, he may not.—THE LORDS found Drysdale being a notour bankrupt, the time of his granting this disposition, (though it was in favour of his hail creditors) the same was null in law, being now quarrelled by the adjudgers, and could not defend against them.

*Fol. Dic. v. 1. p. 84. Fountainball, v. 1. p. 697.*

1715. July 30.

THE CREDITORS OF THOMAS CALDERWOOD *against* BORTHWICK OF CRUICKSTON.

THOMAS CALDERWOOD a little before his death, disposes to his spouse several sums, which is declared to be for the security and better payment of her life rent annuity, provided to her in her contract of marriage in the first place; and for payment of his just and lawful debts in the next place. Borthwick of Cruickston after Thomas's decease, pursues the relic upon the passive titles, and she

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No 235.

Found that a disposition in favour of his creditors, by a bankrupt, was null, and could not defend against adjudgers,

No 236.

A person disposes his effects to his wife, for payment of her annuity, and of his debts.

\* The cases alluded to are, No 15. p. 889. and No 16. p. 890.