

No 222. bankrupt voluntarily to fulfil it, after he falls under the retrospect of the act 1696.

The Court unanimously sustained the objection.

Lord Ordinary, *Dreghorn.*

Act. Solicitor General, *Patison.*

Alt. Dean of Faculty, *Gullen.*

Clerk, *Mitchelson.*

Fol. Dic. v. 3. p. 61. Fac. Col. No 57. p. 126.

Davidson.

S E C T. VII.

Of Voluntary Deeds creating Preference.

1724. July 31.

THE CREDITORS OF MR DAVID WATSON, *against* ROBERT CRAMOND.

MR WATSON having granted an heritable bond of relief to Mr Cramond, he was infeft thereon more than 60 days before Mr Watson's bankruptcy.

Mr Watson had not been served heir in the lands upon which the infeftment of relief was granted; but he gave a procuratory for serving him within 60 days of the bankruptcy, and the infeftment upon that service was after he had retired to the Abbey.

In a competition betwixt Mr Cramond and Watson's Creditors, it was *objected* to Mr Cramond's preference in virtue of his infeftment, that the procuratory for the service was after or within 60 days of the bankruptcy, and that being a voluntary deed by Watson, the same was null by the act of Parliament 1696, being plainly intended to establish a preference to Mr Cramond upon his infeftment of relief, which till then was insufficient, Mr Watson not being infeft nor served heir to his predecessor, to whom he was to make up a title to the lands.

It was *answered* for Mr Cramond, That as his infeftment could not be reduced, being more than 60 days before the bankruptcy, so neither could the procuratory granted by Mr Watson for serving him heir; because it could not be considered as a deed by the bankrupt to one of his creditors in prejudice of the rest, but it served to make up the common debtor's title, which might be beneficial to all; and any advantage Mr Cramond had by it was a consequence of the law, whereby it accresced to his prior infeftment.

THE LORDS found, That Mr Watson's posterior infeftment did accresce to Mr Cramond, and therefore repelled the nullity objected.

Act. *Hay & R. Craigie.*

Alt. *Garden & W. Grant.*

Clerk, *Murray.*

Fol. Dic. v. 3. p. 61. Edgar, p. 117.

* * * See The case Creditors of Gratney, p. 1127. and *postea voce* COMPETITION.

No 223.
A debtor granted an heritable bond of relief. The cautioner to whom it was given, was infeft more than 60 days before the debtor's bankruptcy; who had not been served heir in the property when the infeftment was taken. He made up his titles while in the sanctuary; the benefit of which was found to accresce to cautioner.