

## 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