

1749. November 7.

DICKSON and Others, Creditors of Castle-Somerville, against MARGARET MITCHELL and Others, heirs portioners of Mitchell of Alderston, superior.

IN the ranking of the Creditors of Somerville of Castle-Somermerville, the Creditors having repeated a reduction on the act 1696 of a disposition by the common debtor to Mitchell of Alderston the superior, containing procuratory of resignation *ad remanentiam*, and instrument of resignation following thereon, produced by the representatives of the superior, it was controverted from what time the 60 days were to be computed, Whether from the date of the disposition, from the date of the instrument of resignation, or from the registration of the instrument. *2dly*; The evidence of the bankrupt's having been in the abbey was controverted, it being averred that he went there, not to avoid diligence, but that he had a residence there before his circumstances were suspected.

THE LORDS found; 'That if the debtor was bankrupt within 60 days of the instrument of resignation *ad remanentiam*, it fell under the act 1696; and, before answer to the other points, remitted to the Ordinary to hear parties upon the evidence of his having been in the abbey.'

The ground the Lords proceeded on was, that where lands are disposed to a superior, the resignation *ad remanentiam* is truly the *fasine*, though it goes by a different name; what is called the instrument of *fasine* on a precept contained in a disposition to a third party, being called an instrument of resignation, where a disposition is to a superior containing procuratory of resignation *ad remanentiam*. And as the date of the disposition, containing such procuratory, cannot be the period from which the sixty days run, in respect of the clause in the statute, which declares, that all dispositions shall be reckoned, as to this case of bankrupt, to be of the date of the *fasine* lawfully taken thereupon; so as little could the registration of the instrument be the period, as even in *fasines*, properly so called, the time of the registration thereof is not respected.

*Kilbuckran*, (BANKRUPT.) No 12. p. 57.

D. Falconer reports the same case :

JAMES SOMERVILLE disposed to Mitchell of Alderston his superior, his estate of Castle-Somerville, in security of certain debts due to him; which was completed by resignation *ad remanentiam*, when the disponent was bankrupt.

*Pleaded* for Mr Andrew Dickson, minister of the gospel at Aberlady, and others of the Creditors, The disposition must be held as of the date of the resignation, in consequence of the clause in the statute 1696, appointing deeds, preferring one creditor to another, to be held of the date of the *fasine* taken thereon.

*Pleaded* for the representatives of the disponent, The act mentions only *fasines*, and not resignations *ad remanentiam*.

No 264.

In the case of a disposition to a superior, the 60 days are computed from the date of the resignation *ad remanentiam*.

No 264.

THE LORDS found, That the disposition to the superior behoved to be held as of the date of the resignation *ad remanentiam*. See No 6. p. 4.

Reporter, Murkle.

A&amp;S. H. Home.

Alt. Lockhart.

Clerk, Kirkpatrick.

Fol. Dic. v. 3. p. 67. D. Falconer, No 91. p. 101.

No 265.

A security for a *novum debitum* found not to fall under the clause of the act 1696, relative to the date of the sasine.

1751. January 29.

JOHNSTON against BURNET and HOME.

THOMSON had a credit from the British Linen Co. for which he and Home granted bond to the Company; and, of the same date, Thomson and Burnet gave a bond of relief to Home, in which he disposed to him certain subjects in security of his relief: on which Home took infeftment. A prior creditor of Burnet's pursued reduction of this heritable bond, on the ground, that, before Home's infeftment, Burnet had been rendered notour bankrupt in terms of the act 1696; and, by that statute, the bond must be considered as of the date of the sasine. *Answered*, The clause in the statute, declaring dispositions by bankrupts to be held as of the dates of the sasines, concerns only securities granted to prior creditors, but does not affect *nova debita*, such as the present.—THE LORDS absolved from the reduction.

See The particulars of this case, No 200. p. 1130.

Fol. Dic. v. 3. p. 67.

No 266.

A person, at clearing accounts with his partner, disposed to him an heritable debt in payment of the balance, by assigning the precept for infeftment. He became bankrupt before infeftment was taken; and a creditor had arrested in the interim. In a competition, urged for the disponee, that the statute applies only to deeds

1758. December 20.

SIR WILLIAM MAXWELL of Springkell, against BENJAMIN BELL.

WILLIAM SCOTT and BENJAMIN BELL, carried on for many years, a trade of purchasing cattle in Scotland, and selling them in England; which began in the year 1720.

In 1727, they acquired from John Somervel, *equally betwixt them*, an heritable debt on the estate of Crowdiknow, for L. 350, upon which Somervel had been infeft. The heritable bond and conveyance, in their favour, was produced in the ranking of Crowdiknow's creditors.

Upon the 8th of April 1745, a final clearance was made between them, by a fitted account, in which the whole of this debt was stated to the debit of Bell; and after stating every other article, the balance came out due to Scot by Bell L. 454. A disposition was the same day executed by Scot in favour of Bell, of Scot's share of this debt, assigning him to Somervel's precept. Bell afterwards paid to Scot the balance due by the account.

In the year 1746, Bell put Scot's disposition into the general register.

In 1748, Scot became a bankrupt in terms of the act 1696.

In July 1749, Sir William Maxwell, as creditor to Scot, arrested in the hands of Graham, purchaser of Crowdiknow, in order to affect Scot's share of the an-