

tack from the liferenter, he might set up that possession against the *dominus*. I think therefore the decision, if it be well founded, must rest upon the specialty of the exception; and it must be maintained, that by the disposition the disponee had no title to possess the liferent lands, and therefore the possession of these lands, during her life, was without a title from the disposition, like a man upon a bounded charter possessing any thing beyond the bounds. In short, it must be maintained that the liferented lands were not disposed, at least while the liferenter lived. See *infra*, 19th February 1767.

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1766. August 7. JOHNSTON *against* ———.

IN this case the question occurred again, which had been decided in the case of Ewart two or three days before.

Lord Alemore said that the genius of our law was not to bring in creditors *pari passu*, but, on the contrary, every one was at liberty to get himself preferred by doing more timely diligence than another. That this was so far restrained by the statutes 1621 and 1696, which however only respected the deeds of debtors, but left the diligence of creditors to be governed by the rules of the common law. That he understood no fraud in a creditor who makes use of any information he can get to recover payment of a just debt. The debtor indeed may act partially and wrongfully who gives him such information, but that will not make the act of the creditor wrong who makes use of it: so far from that, he is entitled to ask his debtor what security he can give him for his debt, and where his effects are. If such investigations were to be allowed, and if it would annul the diligence if it were found out that it was the debtor who gave the information, a debtor might have it in his power to disappoint any creditor to whom he had an ill-will, by only telling him where his effects were, after which he could not arrest, at least to the effect of getting a preference, and, in the meantime, other creditors might step in.

These considerations appeared so weighty to the Court, that they superseded determining this point of the cause, and allowed a proof upon another point.

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1766. August 7. GORDON *against* ———.

IN this case it was admitted to be now established law, that an arrestment, or any other diligence by the law of Scotland, was preferable to the assignees under the commission of bankruptcy in England, whether such diligence was prior or posterior to the bankruptcy; as had been decided in the case of *Thomson* and *Tabor*. And the only question was, Whether the assignation under the commission, being produced in process, was equal to an assignation intimated, so as to give a title to sue and uplift the effects in Scotland, not affected by diligence?

Lords Alemore, Coalston, and Auchinleck, thought that it ought to have no ef-