

No 266.

preferable to a prior disponee, as being the first who completely denuded the grantor: And it must follow, of consequence, that in this case Bell had not denuded Scot, or completed his right, till July 1750, after Scot's bankruptcy. Supposing the conveyance by Scot to Bell to have been granted for a sum advanced, or soon after paid, this would not be a good defence against the reduction on the act 1696; as will appear by the decisions collected on this subject; 29th January and 12th December 1717, *Grant contra Duncan*, No 259. p. 1228. And upon that point, after a contrary decision, 19th January 1726, Chalmers against Riccarton, No 260. p. 1231. there followed two other cases in terms of the first decision; 19th June 1731, *Creditors of Merchiston*, No 261. p. 1233.; 25th November 1735, *Trustees of Mathison's Creditors*, No 263. p. 1240. In each of these three cases, the distinction between *nova debita* and prior debts, was rejected. Neither is the pretext of a co-partnership a good defence; for in this case there appears to have been no permanent company between Scot and Bell, but a joint trade carried on from year to year, and the profit annually divided. At any rate, this heritable debt was no copartnership-subject, but disposed to them by Somervell, not as partners, but equally betwixt them; and it was not conveyed by Scot to Bell as a distribution of the company-effects, but, in some measure, sold to him for money he was afterwards to pay.

2dly, As to the annualrents, the disposition in favour of Bell did not denude Scot till infeftment was taken; and therefore, till then, the disposition only imported an assignation as to the annualrents, which was not completed by intimation till after the arrestment; for the date of a disposition not completed, can have no effect in a question with third parties. In two similar cases, an arrestment was preferred, as to the rents of lands, to a prior disposition upon which infeftment was not taken till after the arrestment; 22d November 1633, *Warnock contra Anderson*, Durie, p. 693. *voce* COMPETITION; 24th June 1642, Lord Forrester *contra* Castlelaw, Durie, p. 896. *voce* COMPETITION.

The Court seemed chiefly moved by the defence founded on the copartnership.

'THE LORDS found, That Benjamin Bell was preferable to Sir William Maxwell, as to the principal sum and annualrents in question.' See COMPETITION.

For Sir William Maxwell, *Johnstone, Ferguson. Alt. Montgomery. Clerk, Kirkpatrick.*

Fol. Dic. v. 3. p. 67. Fac. Col. No 151. p. 268.

W. Johnston.

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In this case
sine was
taken more
than 60 days
before the
bankruptcy,
but the regif-

1782. December 13. DOUGLAS, HERON, and Company, against MAXWELL.

IN this case the general question occurred, How far an infeftment granted by a person who was rendered bankrupt within sixty days of the registration was effectual?

The arguments were the same with those formerly urged in similar cases.

THE LORD ORDINARY pronounced the following interlocutor: 'Having con-

considered the words of the act 1696, and the decision of the Creditors of Menzies, (No 258. p. 1226.) in the year 1715, finds, That the deeds under challenge are not reducible under the act 1696. And to this judgment the Lords adhered, upon advising a reclaiming petition for the pursuers, with answers for the defender. See No 217. p. 1163.

Lord Ordinary, *Hailes.*

Ast. *Hay Campbell, Sir John Belsches.*
Clerk, *Hume.*

Alt. *Crosbie, Dalzell.*

Fol. Dic. v. 3. p. 68. Fac. Col. No 76. p. 117.

Craigie.

No 267.
sequestration was delayed till the 59th day. Found, that the deed could not be challenged upon the act 1696.

DIVISION VI.

Cases which peculiarly regard the particular terms of the late Bankrupt Statutes, from 1772 downwards.

1772. August 4. SAMUEL COLE, &c. against EPHRAIM FLAMARE, &c.

THE act 12th Geo. III. c. 72. found to extend to the case of a foreign debtor's effects in this country. An application for sequestration thereof, in terms of that act, in name of the debtor, found competent, and sufficiently authorized by a general letter of mandate to his brother, whom he had originally entrusted as infitor, to dispose of the goods in Scotland: This, in a question with English creditors, who had attached the effects by arrestment. See The particulars of the case, *voce FORUM COMPETENS.* See *NEGOTIORUM GESTOR.* See *SEQUESTRATOIN.*

Fac. Col. No 24. p. 65.

No 268.
12th Geo.
III. c. 72.

1778. January 18.

ROBERT MONTGOMERY, and Others, against JOHN PARKER.

THE personal estate of William Wilson, a bankrupt, was sequestrated upon the statute 12mo Geo. III. c. 72. After the effects had been converted into money, a scheme of division lodged in the process, and the Lord Ordinary had allowed all concerned to see, and give in objections; but before his Lordship had reported the scheme; an interest was given in for Montgomery and Wilson, creditors who had not formerly appeared. These creditors insisted, that they were entitled to draw their proportional share of the first dividend, in consequence of the interest then produced.

No 269.
12th Geo. III.
c. 72.—Creditors who did not lodge their claim with the clerk, within nine calendar months, were found to have forfeited their share of the first distribution.