

Answered: So far as the statute of 1696 is merely declaratory of the common law, by avoiding conveyances which are really fraudulent, it is no doubt to be construed largely, so as effectually to answer the purposes of the legislature. It has also been justly held, even with respect to that part of the statute which is of a correctory nature, by introducing certain legal criteria of fraudulent intention, that every act purposely framed to elude its enacting words, may be annulled, as done in fraud of the law itself. But where a transaction is neither intrinsically fraudulent, nor calculated to disappoint the provision of the statute, no case which the words of the law do not accurately reach can be governed by it. Thus, although in the case of land-rights, the taking of infeftment may be gone through with as much secrecy, as the executing of the disposition or conveyance itself, so that it is by the subsequent registration alone, that the alienation can be known to third parties; it has been repeatedly found, that unless where the recording has been intentionally delayed, in order to deceive, the transference is valid, if the sasine has been published, as the statutes direct. As to the operation of the common law in cases like the present, it cannot admit of dispute. It is true, that in a competition between assignees of personal rights, either legal or voluntary, it is the intimation that regulates the preference. But actual bankruptcy, without a sequestration, or some other species of legal execution, gives to the creditors in general no right whatever to the effects of the debtor. And it cannot be denied, that long before any proceedings of this sort, the assignation had been rendered complete; 17th February 1715, Creditors of Mr John Menzies *contra* Dr Menzies, No 96. p. 981. and *infra h. t.*; 13th December 1782, Douglas, Heron, and Company, *contra* Maxwell, *infra h. t.*

THE LORD ORDINARY sustained the defences.

The question was afterwards considered by the Court, in a reclaiming petition and answers, and the same judgment was given.

Lord Ordinary, *Rockville.* A.G. *Buchan-Hepburn.* Alt. *John Pringle.* Clerk, *Gordon.*
Craigie. *Fol. Dic. v. 3. p. 58.* *Fac. Col. No 28. p. 45.*

1791. *March 1.* CREDITORS OF M^rKELLAR *against* M^rMATH.

IN this case, No 190. p. 1114, the Court were of opinion, That payment of the debt, on which ultimate diligence had been used, was not sufficient to take off the effects of public bankruptcy; and that this could only be done, by showing that the debtor had afterwards been in a situation to pay all his debts due at the time.