

sustained in so far as the defender can instruct that he was a lawful creditor, prior to the disposition, which takes off the presumption of fraud; and that it was lawful for him to take a disposition from his debtor for payment of his lawful debt, seeing there was no diligence done against him.—THE LORDS found, That there being no diligence done by either of the parties against the common debtor, and by the general disposition he became bankrupt; therefore the pursuer and defenders ought to come in *pari passu* effecting to their debts.

Sir P. Home, v. 2. No 715.

1728. December.

DUCHESS OF BUCCLEUGH against SIR JAMES SINCLAIR, and MR PATRICK DOUL.

WILLIAM INNES, factor for the Duchess of Buccleugh, having fallen in considerable arrear, granted a disposition to her Grace of particular subjects, for her security and payment of the balance. It was *objected* against this disposition, by the grantor's other creditors, that it was virtually a disposition *omnium bonorum*, though it contained no general clause of *all goods and gear*; because the debtor's whole effects were therein comprehended. *Answered*, there is a great difference betwixt dispositions bearing to be *omnium bonorum*, and a disposition to any particular subject, supposing the grantor should not be found to have any other estate; the grantor of an universal disposition makes and declares himself bankrupt by the very tenor of the deed, which has the same effect in law *quoad* the acceptor, as if the grantor had been judicially declared bankrupt before, or notouly made so by a course of diligence, whereas every true creditor is in *bona fide* to accept from his debtor, against whom no diligence is done, any of his effects either in security or payment.

This objection was repelled.

Fol. Dic. v. 1. p. 67.

1737. February 25. CRAMOND against BRUCE and HENRY.

A debtor, against whom no diligence was done, having granted a disposition *omnium bonorum*, to one of his creditors in security and payment, and another creditor having arrested in the disponee's hands, and in a furthcoming insisted that the disposition was null, and that he was preferable by virtue of his diligence; the LORDS reduced *ad hunc effectum*, to bring him in *pari passu*; and repelled the *jus retentionis* pleaded for the disponee; for, if the disposition was unlawful, the disponee could have no just title to retain possession. *Fol. Dic. v. 1. p. 67.*

* * The terms of the disposition were, 'of the corn crop upon his possession, and all and hail his horse, nolt, sheep, and other goods and gear pertaining and belonging to him.' This was interpreted to be a disposition *omnium bonorum*; no other funds being condescended on.

No 19.

A disposition of particular subjects, which in fact comprehended the grantor's whole effects, was found effectual to the creditor, as it did not expressly bear, or appear, to be *omnium bonorum*.

No 20.

One creditor arrested in the hands of another who had obtained a disposition *omnium bonorum*. They were ranked *pari passu* on the fund.