

1757. *November 16.*ROBERT SYM, Trustee for JACKSON'S CREDITORS, *against* ALEXANDER SIMSON.

No 248.

Creditors having carried away by diligence great part of a bankrupt's effects; at a meeting of them all but one, he executed a disposition of the remainder to a trustee for their behoof, according to their diligence. The single creditor took separate measures; found ineffectual.

PATRICK and JAMES JACKSONS having become bankrupt, and their creditors having, upon different diligences, carried off the greatest part of their effects, the JACKSONS, at a general meeting of almost all their creditors, except Alexander SIMSON, executed a disposition of the remainder of their effects to Robert Sym, as trustee for all their creditors. The disposition was simple, and unqualified; reserved the several rights and preferences of the creditors; enumerated them all; referred to a signed inventory of the debtor's effects; and contained none but the most common and ordinary clauses necessary for its receiving execution.

In consequence of this disposition, the creditors stopped their diligences.

Two months after, Alexander SIMSON, who had not used any diligence before, arrested in the hands of Robert Sym, for a debt due to him by the JACKSONS. The Sheriff decerned in the furthcoming; Robert Sym advocated the cause.

SIMSON *pleaded*, in the advocacy, That a disposition *omnium bonorum* by a bankrupt, could not stop the diligence of creditors.

Sym made *answer* upon the common argument made use of in support of such dispositions. And, *2do*, That the case in hand was more favourable than the common case of such general dispositions; for that it was only a conveyance of the remaining part of the bankrupt's estate, after the greatest part of it had been torn away by diligence; and that, even of it, the division had, before the meeting of the creditors, been already fixed by the diligences which the creditors had by that time used, in which those only who had diligences had an interest, and in which SIMSON had no interest, it not being denied, that if the other creditors had gone on in their diligences, without using the trust-disposition, there would not have been left any thing for him to have drawn.

' THE LORDS affoizied Robert Sym.'

For Sym, *J. Dalrymple, Geo. Brown.*

For SIMSON, *Arch. Murray, Lockhart.*

J. Dalrymple.

Fol. Dic. v. 3. p. 64. Fac. Col. No 59. p. 97.

1759. *July 25.*

JOHN FORBES-LEITH, and Others, CREDITORS of WILLIAM MOWAT and COMPANY, *against* ALEXANDER LIVINGSTON, and Others, TRUSTEES for the CREDITORS of the said WILLIAM MOWAT and COMPANY.

No 249.

Found to be no sufficient objection, to the proceeding of an adjudication against a debtor's e-

WILLIAM MOWAT and COMPANY became bankrupt. In December 1756 they called a meeting of their creditors, at which John Forbes-Leith was present; at this meeting they made a full discovery of the whole state of their affairs and funds; and agreed, at the desire of the creditors, to make a general surrender of