

No 253.

*Answered* for the Messrs Peters: Experience has shown, that trust-dispositions seldom answer any good purpose; the act 1696 expressly enacts, that all voluntary right granted by bankrupts, within 60 days of their bankruptcy, to any of their creditors, either in satisfaction or security of their debts, shall be void and null; that the trustees could not dispute, but Dunlop was notoriously bankrupt, in terms of the act 1696, within less than 60 days of the date of the trust-right; that it was neither just nor equitable, that by a deed of the bankrupt's, a creditor, without his own consent, should be deprived of the aid of the law, for recovering payment from his debtor, or be obliged to trust to the activity and fidelity of those whom the bankrupt might think fit to trust with the management of his subjects; that such trust-dispositions had never been sustained by the Court to the prejudice of creditors, who had not acceded thereto; Snee and Company against Trustees of Michael Anderson, No 242. p. 1206.; Elizabeth Mudie against Trustees of Strahan, No 252. p. 1217. That these debenture-duties must still be considered as *in bonis* of Dunlop, and affectable by the legal diligence of his creditors.

'THE LORDS, upon advising the petition and answers, adhered to the Lord Ordinary's interlocutors.'

For Messrs Peters, *William Wallace.*

For the Trustees, *Alex. Wight, and Advocatus.*

*Fol. Dic. v. 3. p. 66. Fac. Col. No 50. p. 98.*

*A. Elphinston.*

The case was appealed:

*December 18. 1767.*—The House of Lords ORDERED and ADJUDGED, That the appeal be dismissed this House, and the interlocutors therein complained of be hereby affirmed.

1769. *February 24.*

WATSON *against* ORR, and Others, Trustees for the Creditors of PATRICK TOD.

A PERSON insolvent, but not bankrupt in terms of the act 1696, disposed his effects to trustees, for behoof of his whole creditors.

After the effects had been reduced into money by the trustees, one of the creditors who had attended their meetings, but had never received any dividend, arrested in the hands of the trustees, and of some of the purchasers from them, and pursued furthcoming.

'THE LORDS preferred the trustees, in respect the common debtor was not bankrupt in terms of the act 1696.'

Reporter, *Luchinleck.*

*A&T. G. Buchan-Hepburn.*

*Alt. Geo. Wallace.*

*Fol. Dic. v. 3. p. 66. Fac. Col. No 89. p. 340.*

*G. Fergusson.*

No 254.

The trustees of a person insolvent preferred to arresters, in respect the debtor was not bankrupt in terms of the act 1696.