

of Glasgow, as their agent in that part of the country where he lived, to circulate their notes; they impressed a large parcel of their notes in his hand for that purpose. Having wrongfully applied part of these notes to his own purpose, without leave asked or given, he also, without acquainting the Bank, caused write out an heritable bond by him to them for £2000, which, a few days before his failure, and his retiring from Berwick, he transmitted to them, and upon which they soon after took infestment.

Fenwick Stowe was not a bankrupt in terms of the Act 1696; indeed, it was impossible to make him so; for though, by having an estate in Scotland, he could be charged with horning, at market cross, pier and shore, yet no caption could be issued against him; without which he could not be brought under the description of the Act 1696.

His other creditors, however, brought a reduction of this bond at common law, and insisted much on the similarity betwixt this case and that of Sir Archibald Grant against the Creditors of Tilliefour, decided 10th November 1748, and observed both by Falconer and Lord Kaims.

Accordingly, Lord Kaims, Ordinary, by interlocutor, 6th March 1773, pronounced this interlocutor:—"In respect the heritable bond granted by Fenwick Stowe, the common debtor, to Sir James Maxwell and Company, though dated 30th May 1768, was only transmitted to them, inclosed in a letter from Fenwick Stowe, dated 27th June 1768, and he failed in the beginning of July thereafter; and that infestment was not taken on the bond till the 13th of that month: Finds the bond was voluntarily granted by Fenwick Stowe, when he had the immediate prospect of bankruptcy, with an intent to prefer Sir James Maxwell and Company to his other creditors; therefore reduces the said bond, so far as to be ranked only *pari passu* with the other adjudging creditors."

But this interlocutor having been brought under review, by petition and answers, the Lords altered, and preferred the Bank; and to this, after a hearing in presence, they adhered, (August 1774;) for as Stowe was not a bankrupt in terms of the Act 1696, there did not appear any fraud in his thus giving an heritable bond to an onerous creditor, without that creditor's knowing of it.

1775. March 3.

CALENDAR against FIDDES.

THE late Act of Parliament makes no alteration in the legal characteristics of a bankrupt pointed out by the Act 1696; so that, although a person applies for the benefit of that statute, and obtains it, he is not a legal bankrupt, unless he falls under the marks of bankruptcy fixed by the Act 1696. So held, 3d March 1775.