No 208.
lenge a fecond diſpoſition, followed by infeftment.

of what he owed him; and as the law was at that time underſtood to ſtand, Hall was adviſed that Richardſon's own right being perſonal, he was effectually denuded by the diſpoſition; and accordingly, without uſing the precaution to obtain himſelf infeft by the ſuperior upon the adjudications, he entered into poſſeſſion. But the memorable deciſion between Bell of Blackwoodhouſe and Gartſhore * ſupervening in 1737, Joſeph Shaw another creditor obtained from Richardſon, in 1740, a diſpoſition to the ſame ſubjects, and obtaining himſelf infeft upon the adjudications, and thereby acquiring a preference to Hall, as the law now is ſuppoſed to ſtand on the footing of that deciſion, purſued an action of mails and duties.

Gabriel Hall for his defence purſues a reduction of Shaw's right on the act 1696; on this ground, That Richardſon was notour bankrupt at the date of the diſpoſition to Shaw; the relevancy whereof was conteſted by Shaw on this ground, that his preference to Hall did not ariſe from his diſpoſition from Richardſon, to which Hall's diſpoſition as prior was preferable, but from his infeftment from the ſuperior. That being the caſe, his infeftment was not reducible upon the act 1696, as the Lords found January 1734, Creditors of Scott of Blair *contra* Colonel Charteris, *infra h. t.*

Answered, That it might be true, were Hall's allegeance no other than that Richardſon the common debtor had become bankrupt within 60 days of Shaw's infeftment, the caſe would not fall under the act 1696, as that infeftment flowed not from the common debtor; and no more is determined by that deciſion. But here the allegeance is, that the common debtor was bankrupt at the date of the diſpoſition to Shaw, which diſpoſition to Shaw, Hall the firſt diſponee was, as creditor to the granter upon the warrandice, entitled to reduce on the act 1696, and the diſpoſition to Shaw being reduced, the infeftment obtained upon the adjudications fell of conſequence.

Which the LORDS 'ſuſtained, and found the reduction competent.'

Fol. Dic. v. 3. *p.* 57. *Kilkerran*, (BANKRUPT) *No* 7. *p.* 53.

1783. *November* 19.

JAMES ROBERTON-BARCLAY, *againſt* WILLIAM LENNOX.

No 209.
An infeftment found reducible under the act 1696, tho' the right on which it proceeded was anterior to the right of the creditor challenging.

MR ROBERTON of Bedlay, in July 1778, granted an heritable bond to Mr Lennox of Woodhead, a creditor of his. Some time afterwards, Mr Roberton contracted debts to Mr Robertſon-Barclay, and others.

Mr Lennox did not take infeftment on his ſecurity, till 28th May 1779, and within leſs than *ſixty* days from that date, Mr Roberton was rendered a *notour* bankrupt.

In the ranking of Mr Roberton's creditors, Mr Robertſon-Barclay

Objected to Mr Lennox's intereſt: The bond and infeftment fall under the

* Rem. Dec. v. 2. p. 15. *voce* COMPETITION.

No 209. ſanction of the ſtatute of 1696, and are null; the latter having been taken within *ſixty* days of the granter's bankruptcy, as deſcribed in that ſtatute. For, to uſe the words of the law, 'all diſpoſitions, heritable bonds, or other heritable 'rights, whereupon infeftment may follow, granted by the bankrupts, ſhall only 'be reckoned, as to this caſe of bankrupt, to be of the date of the ſaſine law-'fully taken thereon.' In the caſe of *nova debita*, it is true, the Court have of late determined, that ſaſine following within the *ſixty* days on a ſecurity prior to that period is valid; but the *novum debitum* would have equally ſupported the infeftment, though the ſecurity itſelf had been poſterior to the commencement of the ſtatutory ſpace: And thus the diſtinction of that caſe from the preſent is apparent. Nor is it of more importance in this argument, that the debt of the creditor challenging had not been contracted when the ſecurity was given; the enactment now recited being expreſsly calculated to guard creditors from the effect of latent rights, the publication of which, in due time, by infeftment, would have appriſed them of their danger.

Answered: The act of Parliament in queſtion, as being of a corrective nature, ought to be interpreted with ſtrictneſs. Its declared purpoſe is, to protect creditors 'againſt fraudulent alienations made in their prejudice;' a deſcription not at all applicable to deeds done before their debts exiſted. If then the ſtatute in general have no relation to ſuch anterior alienations or ſecurities, it is plain that the clauſe above quoted is to be underſtood only in reference to thoſe deeds which are ſubſequent to the right of the creditor who brings the challenge. The ſtatute, as was ſhewn in the caſe of Mrs Roberton*, is not calculated, nor was it deſigned, to protect creditors againſt latency; but if its tendency had been ſuch, *nova debita*, as well as earlier debts, would have fallen under it. Accordingly, the contrary doctrine is not ſupported by any deciſion of the Court.

The Lord Ordinary reported this queſtion to the Court, when

The Lords, diſregarding the diſtinction pleaded by Mr Lennox, 'ſuſtained the objection to the claim of preference made upon the heritable bond of relief in his favour, ſo far as the debts of the objecting creditors were contracted prior *to the date of the ſaſine.*'

Reporter, *Lord Ankerville.* For Mr Lennox, *Ilay Campbell.* Alt. *C. Hay.* Clerk, *Home.*

Fol. Dic. v. 3. *p.* 61. *Fac. Col. No* 123. *p.* 195.

Stewart.

* Spottiſwood againſt Robertſon Barclay, *infra h. t.* (No 221.)