

afide the adjudication *in toto*, it being considered as unreasonable, where nothing fraudulent or collusive could be stated, to annul a deed which, without any apparent injury to the other creditors, tended to save unnecessary expence to the party obtaining it.

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On the other hand, it was *observed*, that by requiring a proof of actual fraud, in order to set aside deeds of this kind, the purpose of the enactment in 1696 would be in a great measure frustrated; and that while by the establishment of such a general rule as was contended for by the objecting creditors, many improper proceedings would be prevented, no injustice could arise from it, every person being equally put on his guard.

After advising informations, the Court "sustained the objection."

A reclaiming petition was preferred, which was followed with answers.

Counsel were afterwards heard.

And the Court, by a very narrow majority, adhered to the judgment formerly pronounced.

Reporter, *Lord Ankerville.*

Act. *Abercrombie, Honyman.*
Clerk, *Home.*

Alt. *Solicitor-General, Ross.*

Ed. Dic. v. 3. p. 54. Fac. Col. No 170. p. 345.

Craigie.

S E C T. II.

What sort of Alienation falls under the sanction of the act 1696.

1700. February 27.

DURWARD *against* WILSON.

In a competition among the creditors of George Balfour, Normand Durward had got a bill from him for L.50 Sterling drawn on George Wilson, who accepts; but, before payment, William Struthers and Mungo Cochran, creditors to Balfour, arrest in Wilson's hand, who suspending on double pinding, Durward craves preference, as having an accepted bill, prior to their arrestment. They repeat a reduction and declarator, that Balfour, the drawer, within 60 days after the date of the bill, broke, absconded and fled, and so must be declared bankrupt, conform to the act of Parliament 1696, within which space he could do no valid nor legal deed, in prejudice of their diligence, though posterior; and therefore the bill, as fraudulent, must be reduced, especially seeing they had hering executed against the drawer before his giving the bill. *Answered*, By the act of Parliament 1696, Balfour must first be declared insolvent and bankrupt which is not yet done. *2do*, The said act annulling all deeds within 60 days of their breaking,

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An inland bill, found reducible upon the act 1696, being, not for value instantly received, but in security of a prior debt.

No. 191.

can never be extended to bills of exchange, which are reputed as bags of money going *de manu in manum*, which are neither capable of being stopped by arrestment nor compensation; otherwise all commerce by bills would be clogged and confounded. *Replied* to the 1st, They now crave Balfour may be declared bankrupt. And for the 2d, if a bill of exchange be instructed to have been drawn for money actually paid down, or equivalent goods delivered, then that bill may not be quarrelled, though he break within 60 days thereafter; but where it is given to a creditor by a partial gratification to prefer him to the rest, there is no doubt it falls under the act of Parliament, and becomes reducible; as was lately found betwixt Hary Baird and Henry Mein's Creditors;* and, if it were otherwise, then all bankrupts, within 60 days of their breaking, would make all their fraudulent conveyances by bills.—THE LORDS found bills included within the act of Parliament as well as other assignations, unless they bore value received, or so proven, &c. The great inconvenience by the interlocutor is, that it puts parties to prove the onerous cause of their bills, which may be a retardment to the currency of trade. *See BILL of EXCHANGE.*

Fol. Dic. v. 1. p. 82. Fountainball, v. 2. p. 86.

1713. *January 16.* *CAMPBELL of Glenderowall *against* GRAHAM of GORTHIE.

No 192.

Indorsation of a bill of exchange, made by a notour bankrupt, or his trustee, in payment or security of an anterior debt, falls under the act 1696.

ROBERT CAMPBELL, *alias* Rob Roy, draws a bill upon Graham of Gorthie payable to the drawer, which Gorthie accepted; and the drawer having indorsed that bill to Hamilton of Bardowie, about the same time the indorser broke and fled; Gorthie thereupon raised reduction and declarator against Bardowie, setting forth the matter of fact, and occasion of drawing and accepting the bill, viz. That the cause of the bill was a contract of the same date, whereby Rob Roy was obliged to deliver to Gorthie a certain number of Highland cattle; that he had made the like bargains with a great many gentlemen, who had trusted him with money, in contemplation of receiving the value in cattle; and having thus amassed a great sum of money in his hands, he did most fraudulently withdraw; and fled without performing any thing on his part; and thereby became unquestionably a notour and fraudulent bankrupt, under the description of the act of Parliament 1696 anent bankrupts; and about the same time indorsed this bill to Bardowie, against the faith of this contract.

Bardowie having indorsed the bill to Campbell of Glenderowall, he charged Gorthie upon the accepted bill, who suspended on this reason, that the subject of the bill was rendered litigious against Bardowie upon the act of Parliament 1696.

It was *answered*, That the process against Bardowie, or the act of Parliament 1696 upon which it is founded, can take no effect in prejudice of the charger, to whom the pursuer's accepted bill was indorsed *bona fide*, and for a most onerous cause; because bills of exchange are considered as bags of money not liable to exceptions competent against other debts and claims, but pass *de manu in manum*,

* Examine General List of Names.