

bond upon which was founded the title to pursue the reduction, was itself reducible.—THE LORDS found accordingly, and the reduction was abandoned.

No 242.

Bogle then obtained a decree of constitution of the original ground of debt, and arrested in the hands of the disponees. In the furthcoming, the question of the effect of the disposition *omnium bonorum*, was brought forward.

In addition to the specialities of the case enumerated in the above report, it was likewise objected, That the debts due to the bankrupt were not specially assigned in the disposition, so as to be traced, or capable of intimation, consequently the creditors had no check upon the trustees, and no security to prevent the bankrupt from privately taking up the money.

The answer of the creditors, upon the general question, was similar to that urged in former cases, (*supra*). As to the specialities, they argued, that no trust-deed could be perfectly simple; that objectionable conditions were not challengeable on the act of 1696, whatever they might be on that of 1621. The grounds of challenge of such deeds are either in respect of undue preference, proceeding upon the act 1696, or on account of the injustice of the conditions imposed, proceeding upon the act 1621. The circumstance merely, that there are conditions, is no objection. They must be unjust to be objectionable. It was necessary for the bankrupt to name the trustees, in order to give form and effect to the deed. The trustees are not impowered to assume what creditors they please; they are only entitled to communicate the benefit of the deed, to creditors appearing within a certain time, though not named in the deed. The forfeiture, upon using diligence, is not reducible on the statute 1696, as it is applicable to all the creditors. If it be not strictly legal, it ought to be held *pro non scripto*. *Utile per inutile non vitiatur*. The clause relative to freedom from the consequences of omission, was necessary to induce trustees to accept: But there have been no omissions. As to the circumstance that the assignation is general; it refers to an inventory. The trustees rendered the assignation special, by inventorying and rousing the effects at the sight of a magistrate. A disposition *omnium bonorum* in favour of one creditor, in exclusion of another, is challengeable. Such a disposition for behoof of all the creditors is not so. It cannot be pretended there was simulation. Possession was not retained a moment.

For Snee & Co. *Jas. Ferguson*.For Anderson's Creditors, *Ro. Craigie, Jas. Graham*.
Session Papers in Advocates' Library.

1735. January 28. MANSFIELD against BROWN and STOBBS.

No 243.

A BANKRUPT had disposed to trustees in favour of his whole creditors. A creditor had previously executed a charge of horning.—This found sufficient to render the trust-deed ineffectual. See The particulars *voce* LEGAL DILIGENCE. See No 241. p. 1205. *Fol. Dic. v. i. p. 85.*