

payment of what Elmsly owed them; he insisted for furthcoming of the sums paid, alleging the payment was reducible, as being partially made, in defraud of him a creditor who had used diligence.

No 131.

THE LORD ORDINARY, 15th instant, affoizied the defenders.

*Pleaded* in a reclaiming bill; by the act 1621, if a dyvour shall make any voluntary payment, in defraud of the more timely diligence of another creditor, the creditor having used the first lawful diligence, shall have good action to recover what was voluntarily paid in defraud of his diligence: The Lords have sustained repetition of goods delivered by a bankrupt, in defraud of his creditor's diligence, 27th January 1715, Forbes of Ballogie against the Creditors of Forbes, *infra h. t.*; 19th July 1728, Taylor against Smith, *infra h. t.* A bankrupt can sell his estate; and if he can pay away the money among his favourite creditors, it will render of little use the statutes for preventing partial preferences.

THE LORDS refused the bill.

*Pet. H. Home.*

*Fol. Dic. v. 3. p. 52. D. Falconer, v. 2. No 186. p. 225.*

1758. July 21.

GRANT against SMITH.

A DEBTOR being pressed by his creditors, who were about to poind his effects, made partial sales to several of them of so much of his corn, which was yet green, as might be equivalent to their debts; and the corns were delivered to the buyers by a sort of symbolical tradition, on the sport. These corns were re-purchased from the creditors by a tenant, who, at the next term, succeeded the debtor in his farm. Another creditor, several months after, thinking that these sales could be no bar to his diligence, proceeded to poind the corns, but was stopped by the tenant who had purchased them.—In a competition, it was *pleaded* for the poinding creditor, That the law will not sustain the voluntary and partial deeds of an insolvent debtor; and these sales must be reducible upon the act 1621, as the property could not be transferred to the purchasers, till after they came to take possession of the corns, by reaping them, which was after the poinder's diligence.

*Answered*, The sales were publicly made, and not clandestinely to give a preference to particular creditors; but some creditors having their diligences ready to poind, which would have made them preferable to this competing creditor, the corns were fairly sold to them in payment of their debts, and delivered over to the buyers, remaining upon their risk.

THE LORDS sustained the defences for the purchasers.

*Fol. Dic. v. 3. p. 52.*

No 132.

A bankrupt found entitled to sell growing corn to creditors who were ready to poind.