otherwise informed of his debt, it carried, by a majority of one, to repel the objection to his arrestment.

*N.B.* Lord Pitfour said, that, in the case of reduction, upon the Act of Parliament 1696, the alienation ought not to be reduced *in totum*, but only so far as it was in prejudice of the other creditors, as in the case of a disposition *omnium bonorum;* but he said the decisions of the Court had gone the other way, and the words of the Act of Parliament were strong.

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1766. *August* 6. CAMPBELL of OTTER *against* WILSON.

THIS case I have mentioned before, 26th June 1766. To-day a pretty general point occurred concerning the doctrine of prescription:—I get a disposition of lands *a non domino*, which I make a title of prescription: in the assignation to the maills and duties, a liferent of a part of the lands is excepted, and it is declared that the disposition is with the reservation of this liferent: now this liferent proceeded *a vero domino;* afterwards I make a bargain with the liferenter, and possess the lands upon an assignation from her. The question is, Whether this possession can be imputed into the years of prescription?

Lord Coalston maintained that, when a man had two titles in his person, as in this case, the disposition to the property and his assignation to the liferent, he might ascribe his possession to either; and he said it was the same case as if the prescriber here had acquired a wadset right, or any other incumbrance proceeding *a vero domino*.

On the other hand, Pitfour and Kaimes maintained that *nemo mutare potest causam suæ possessionis*, at least not in a question with a *verus dominus*, from whom the title of possession proceeded; and they said it was the same thing as if the prescriber had taken a tack from the liferenter, the possession upon which tack he could not ascribe to another title, in prejudice either of the liferenter, or the *verus dominus* from whom she derived her right. But the President put his opinion upon the specialty of the exception of the liferent right in the disposition; and it carried, *dissent. tantum* Coalston, That the years of the liferent were to be deduced.

*N.B.* The general principle maintained by Pitfour and Kaimes, I think, is wrong, nor will the maxim of *nemo mutare potest, &c.* apply to such a case as this; for it only applies to the case where I acquire a new title, and would set it up against the person with whom I have contracted, and from whom I derive my right to possess; as, for example, if the prescriber in this case had acquired any other title to the lands, and had set that up against the liferenter, from whom he had taken the assignation, or, as if a man took a tack of lands from me, and then acquired a right from any other body, and upon that pretence refused to pay the rent. But this will not apply to the *verus dominus*, with whom the prescriber never contracted or agreed; and, therefore, whatever way he got the possession, suppose even upon a

tack from the liferenter, he might set up that possession against the *dominus*. I think therefore the decision, if it be well founded, must rest upon the specialty of the exception; and it must be maintained, that by the disposition the disponee had no title to possess the liferent lands, and therefore the possession of these lands, during her life, was without a title from the disposition, like a man upon a bounded charter possessing any thing beyond the bounds. In short, it must be maintained that the liferented lands were not disponed, at least while the liferenter lived. See *infra*, 19th February 1767.

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1766. *August* 7. JOHNSTON *against* ———.

IN this case the question occurred again, which had been decided in the case of Ewart two or three days before.

Lord Alemore said that the genius of our law was not to bring in creditors *pari passu*, but, on the contrary, every one was at liberty to get himself preferred by doing more timely diligence than another. That this was so far restrained by the statutes 1621 and 1696, which however only respected the deeds of debtors, but left the diligence of creditors to be governed by the rules of the common law. That he understood no fraud in a creditor who makes use of any information he can get to recover payment of a just debt. The debtor indeed may act partially and wrongfully who gives him such information, but that will not make the act of the creditor wrong who makes use of it: so far from that, he is entitled to ask his debtor what security he can give him for his debt, and where his effects are. If such investigations were to be allowed, and if it would annul the diligence if it were found out that it was the debtor who gave the information, a debtor might have it in his power to disappoint any creditor to whom he had an ill-will, by only telling him where his effects were, after which he could not arrest, at least to the effect of getting a preference, and, in the meantime, other creditors might step in.

These considerations appeared so weighty to the Court, that they superseded determining this point of the cause, and allowed a proof upon another point.

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1766. *August* 7. GORDON *against* ———.

IN this case it was admitted to be now established law, that an arrestment, or any other diligence by the law of Scotland, was preferable to the assignees under the commission of bankruptcy in England, whether such diligence was prior or posterior to the bankruptcy; as had been decided in the case of *Thomson* and *Tabor*. And the only question was, Whether the assignation under the commission, being produced in process, was equal to an assignation intimated, so as to give a title to sue and uplift the effects in Scotland, not affected by diligence?

Lords Alemore, Coalston, and Auchinleck, thought that it ought to have no ef-