

So the question was, Whether notwithstanding Straiton's having complied with the commission of bankruptcy, Christie, a former creditor in Scotland, could attach the goods after acquired? The President thought, that had the debts been contracted in England, though to a Scotsman, that he could not; but thought those debts were contracted in Scotland, and yet, because of the particular notice given, thought that at any rate he could have action no farther than he would have been entitled to, had he accepted of the share with the other creditors; that whether he might have action against Straiton to that extent he was not clear, but inclined to think that he could have no action. Tinwald thought the English statute could have no effect *extra territorium* but *ex comitate*, that it was *in rem scripta*; but that Scots or Dutch creditors were not subject to it; that the private notice was of no force. If foreigners were bound by that law, then such notice was not necessary; and if they were not bound as *extra territorium*, then that private notice could not bind them. I noticed, that as the *cessio bonorum* was to some extent received in all civilized nations, and chiefly in favours of commerce, it would be hard if such was the law of nations, that it was impossible he could have the benefit of it. If the *cessio* was in England, it could not be available in Holland or Scotland. 2<sup>do</sup>, That these debts were truly contracted in England: The bills became debts the moment they were out of his hands, though Christie became the creditor only when he paid them, and he was bound by the commissions whenever he sent them away, and both behoved to be regulated by the law of the place where they were signed, otherwise London, Paris, and Smyrna, might be the *locus contractus* of one and the same party to different contracts at one and the same time; and whatever might be the law in debts contracted in foreign countries when the party was locally there, yet here the contract is made upon the faith of the law of England. The Lords agreed as to the bills, but not as to the commissions. But Drummore observed, that by the commissions the contract was to be executed in England, the goods to be sold for their joint behoof, and to be accounted for there, which had great weight with the President; and upon the vote, it carried that Christie was barred from recovering his payment out of those effects acquired after the commission of bankruptcy, and therefore to prefer Spence. *Renitent*. Tinwald.—N. B. Strichen did not vote, nor I think Monzie, and Kilkerran did not hear the reasoning, and therefore did not vote.—Nov. 4, Adhered. *Vide* Notes on petition.

No. 21. 1747, Nov 13. OGILVIE *against* CREDITORS of ABERDEEN.

CAPTAIN OGILVIE, as creditor to Mr Aberdeen, arrested in the hands of certain debtors, and pursued forthcoming. Compeared the assignees of the Commissioners of Aberdeen's bankruptcy appointed in England, and claimed to be preferred, because John Aberdeen was residing at London, and the pursuer's debt being contracted in England, the case behoved to be judged according to the law of England, because *mobilia sequuntur personam*; and then the arrestment though prior to the bankruptcy, yet was voided by the subsequent statute. 2<sup>d</sup>, The pursuer actually claimed before the Commissioners of bankruptcy. Answered, 1<sup>mo</sup>, Moveables in Scotland cannot be attached but by diligences issuing out of the Courts of Scotland, and such diligence must have its operation according to the law of Scotland. To the second, That he indeed entered a claim, but the Commissioners

refused to receive it, that is, to allow him to prove his debt because he had used arrestment in Scotland. The pursuer also quoted the decisions, The creditors of Spence, &c. finding that bankrupts in England complying with the statute had the benefit of personal liberty, and of their *bona acquirenda*, against all debts contracted in England. I gave my own opinion against the assignees, but was pressed by Pitfour to report it for advice, which I did, and the Lords this day unanimously preferred the arrester.

No. 22. 1747, Dec. 5, 8. THOMAS MORISON *against* (GORDON) STRICHEN.

MORISON being incarcerated for a debt due to Gordon by account-current of goods consigned to him at London, and balance of a bill accepted by him, he presented a bill of suspension and liberation upon this ground, that after these debts a commission of bankruptcy was taken out against him, that he had complied with the statute, and given up this among his other debts, and surrendered all his effects, and produced certificate from the Chancery agreeably to the judgment 20th June 1746, Marshall *against* Yeaman and Spence, and Christie *against* Straiton. Continued till Tuesday. (See the sequel in Note, *voce* FOREIGN.)

No. 23. 1748, July 19, 23. M'KINNIE, &c. *against* FORRESTERS.

WE found the charge of fraudulent bankruptcy against George Forrester, and that Robert was partaker with him in his fraud proved, and 23d July declared them infamous in terms of the act 1621, ordered them to be pillored at Glasgow the 10th day of August, with a paper on their breast, "Infamous fraudulent bankrupt," and then banished to the Plantations for seven years.

No. 24. 1749, Nov. 7. CREDITORS OF CASTLE-STEWART *against* MITCHELL.

IN a question of bankrupt, of a disposition whereon there was no sasine, but being to the superior there was a resignation *ad remanentiam*, the Lords found, that in the question of bankrupt the disposition was to be reckoned of the date of the resignation.

No. 25. 1750, July 10. CREDITORS OF JOHNSTON *against* NISBET, &c.

JOHNSTON granted a security to Innes 17th July 1746. He was 16th August committed to prison by Dirleton, but liberated 20th, and on 21st granted a further security to Dirleton, and continued to carry on his business of a merchant as formerly, at least till January 1747, and is now found to have been then quite insolvent. The other creditors quarrelled these two securities. I quoted the case 9th February 1743, Creditors of Agnes Hamilton *against* Henry, (*supra*) on which we got memorials. Though I was against the judgment in that former case, yet I thought it hard that a security obtained by force of diligence, when no other creditors used diligence, should be voided merely by that creditor's own diligence; and therefore thought, where the imprisonment was momentary, and the debtor returned to the *forum*, that was not notour bankruptcy in the meaning of the act. On the vote, it carried to repel the reasons of reduction; *renitentibus* Justice-Clerk and Kilkerran.—9th November, Altered and reduced, in which I concurred. The petition is accurately written. 22d November, Adhered.