

No 42.

1766. December 2. STEWART *against* FOGGO.

A BILL having been indorsed to a merchant in London, for 'value in account,' was protested in his name for not payment, and returned to the indorser, who charged the acceptor with horning, and executed a poinding, after receiving advice that the indorsee had died at London some days before the date of charge.

"THE LORDS reduced the poinding;" though it was pleaded that, in the case of indorsations for value in account, the substantial interest remains in the indorser.

And they repelled the plea of retention argued for the poinder, upon the authority of the decisions, 10th December 1707, Lees *contra* Dinwoody, No 14. p. 3831.; and 14th July 1745, Creditors of Glendinning *contra* Montgomery, No 51. p. 1449. and No 34. p. 2573.

In both these cases, there was a *bona fides*, which did not occur in this case.

Act. Sinclair.

Alt. Armstrong.

G. F.

Fac. Col. No 48. p. 277.

No 43.

A pardon having been granted to a criminal sentenced to transportation, on condition of his enacting himself to banishment after being set at liberty, personal diligence at the instance of creditors not thereby precluded.

1790. March 3. EBENEZER GARDNER *against* THOMAS HALL.

HALL being convicted, before the High Court of Justiciary, of the crime of swindling, sentence of transportation was passed against him. The punishment however was afterwards remitted, he having obtained a pardon from the Crown, 'under the condition of his enacting himself to banishment from his Majesty's European dominions, within 20 days from his being set at liberty, for the term of seven years.'

Having been, prior to his conviction, arrested in prison by his Creditors, he now presented a bill of suspension and liberation, and

*Pleaded*; It is obvious that the claims of a private creditor must ever yield to public justice, when it inflicts punishment on the debtor. If he be possessed of a lucrative life-estate, his death will not be prevented, though a certain loss result from it to his creditors. Nor is the transportation of a felon to be impeded by his creditors' arresting him in prison.

Such is truly the situation of the complainer. Though he has received the royal pardon, his punishment is not completely remitted, but only commuted; sentence of transportation being changed into his enacting himself to banishment, in the same manner as transportation is often substituted for capital punishments. He is therefore to be viewed in the same light as if the latter had been the original sentence.

In England many similar cases have occurred, and the same rules must in this matter prevail in both kingdoms. Thus, a pardon being granted to a felon