1772. *August* 1. SAMUEL COLE and OTHERS *against* EPHRAIM FLAMARE and SON.

BANKRUPT—*FORUM COMPETENS.*

Act, 12th Geo. III. cap. 72, extended to the case of a foreign debtor's effects in this country, and an application for sequestration thereof, in terms of the said Act, in name of the debtor, found competent, and sufficiently authorised by a general letter of mandate to his brother, whom he had originally intrusted as institor for disposal of these goods in Scotland, in a question with other English creditors who had attached those goods by arrestment.

[*Fac. Coll., VI.* 65; *Dictionary*, 4820.]

ALEMORE. It is extremely expedient that assistance should be given, in Scotland, to creditors. It is hard if neither the laws of the one country or the other can give a remedy. If a person in England is willing to make an equal distribution of his effects in Scotland, there is nothing in the statute to prohibit it. He cannot be obliged to produce his books, because they are in other hands; but we may go as far as we can.

MONBODDO. The argument, on the other side, resolves into this; we cannot do every thing, therefore we should do nothing. After arrestment is laid on, a foreigner is, as to the goods arrested, in the same situation as a native: Poinding may then proceed; why not sequestration?

ALVA. The words in the beginning of the Act do not exclude this application. Although one part of the Act may not be executed, another may.

GARDENSTON. This is a liberal law, and should be liberally construed. The first clause of the statute is not applicable to foreigners, but the other is. It is true, that, with respect to foreigners, the law cannot be carried into execution in all its parts; but what then? The same thing will happen when a Scotsman becomes bankrupt in England.

PITFOUR. I see the bad consequences of a narrow construction of the statute, and the propriety of a liberal construction. Besides, the law is itself sufficient for the remedy sought.

COALSTON. The great intention of the statute was to wipe off the aspersion on our law as favouring Scottish creditors, and to introduce a *pari passu* preference. The question is as to that clause which allows the debtor to apply for a sequestration. The statute is broad enough for the remedy.

PRESIDENT. I am now clear of opinion for granting the remedy. Much absurdity would arise from the contrary opinion. We may order the books to be produced, and the bankrupt will have this excuse to offer,—that the books are not in his power.

On the 1st August 1772, "The Lords found that there was sufficient authority for the petition; that the petition was competent; and accordingly sequestrated the goods."

Adhered, 11th August 1772.

Act. R. Sinclair, H. Dundas. *Alt.* W. Bailie, J. Montgomery.

N.B.—I expressed my doubts of this judgment. I thought the measure a good one, but I did not see the authority for it in the statute. I could not approve of a liberal interpretation in a case which certainly had escaped the observation of the framers of the statute. I thought that the impossibility of exacting from the English debtor what the statute required, was evidence that the statute respected not such debtor.

1772. *August* 1. SIR LUDOVIC GRANT and OTHERS, *against* EARL of FIFE and OTHERS.

MEMBER OF PARLIAMENT.

Reduction of a decree of valuation.

[*Faculty Collection, VI.* 65; *Dictionary*, 8656.]

AUCHINLECK. Ground is not surely the worse for being turned into a garden. Two men swear to what two other men swore. I like not this proof by progress. It is impossible, without further proof, to determine what the witnesses mean.

COALSTON. As to the question, How far the rents of gardens are to be taken *in computo*—the words of the statute are very extensive; all profits of lands were to be valued. Casual rents must be valued: a garden produces a casual rent.

PITFOUR. Whenever we have the original valuation, that must be the rule. In a question upon the old extent, a mill was found not to be comprehended, because it was proved that mills were not extended. If the garden was originally deducted from the valuation, it should not come *in computo* now.

ALEMORE. A garden of any considerable extent is to be reckoned as a subject having a constant value. A small garden may perhaps have been passed over unobserved by the valuators.

PRESIDENT. The great difficulty of all is, that the valuation on which the last valuators founded, was not upon oath: it bears in its bosom to have been nothing more than a declaration. Two men *swearing* to what two other men declared, can never be evidence.

On the 1st August, (or 31st July,) 1772, "The Lords reduced the division of the valuation;" and, 11th August 1772, adhered.

Act. A. Lockhart, &c. *Alt.* Ilay Campbell, &c.

Reporter, Stonefield.

N.B.—The decreet was reduced on the grounds suggested by the President, which had escaped the observation of the pursuer's lawyers. The question as to gardens was not determined.