

No 91.

1776. August 7. GLOVER and Others *against* VASSIE.

BEDFORD and Sons merchants in Leeds having become bankrupt, and a commission of bankruptcy being awarded, Vassie, an English creditor, received a dividend under that commission; but, learning that the bankrupts had some effects in Scotland, Vassie laid arrestments in the hands of the Scottish debtors, and in a process of furthcoming obtained a preference on the sums due. The assignees under the commission of bankrupt objected to this preference, on the grounds that Vassie being a native of England, could not compete with the English assignees under the commission of bankrupt, and that he had obtained a dividend under that commission. On the part of Vassie it was *urged*, That the assignees under an English commission of bankruptcy, have no right of action in this country, to recover the bankrupts effects therein situated, or to compete for the same with a creditor who uses the diligence of the law of Scotland.—THE LORDS found the assignees under the commission had a right of action entitling them to recover the bankrupts effects in Scotland, and to compete for the same; and further, that Vassie, an Englishman, and claiming under an English debt, and having drawn a dividend for the same under the commission of bankruptcy, is barred from competing with the assignees, or claiming any preference on his arrestments. See APPENDIX. See Note under p. 757.

*Fol. Dic. v. 3. p. 227.*

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1787. November 28. JOHN SCOTT *against* JAMES LESLIE.

No 92.

An assignee under an English commission of bankrupt, by obtaining decree in absence against a debtor of the bankrupt, divests him of the *jus crediti*, and renders every posterior arrestment ineffectual.

A COMMISSION of bankrupt having been issued against Andrew Mitchell merchant in London, Mr Scott was appointed assignee to the estate. Having learned that one Ferguson, residing in Scotland, was debtor to Mitchell, Scott, in the character of assignee, demanded payment of the debt, of which he immediately received a part, and upon naming an attorney, raised an action for the remainder. After the summons was executed, some farther partial payments were made; and at length decree for the balance was obtained in absence. But before the decree was extracted, Leslie, as a creditor of Mitchell's, raised a process of constitution, and upon the dependence used arrestments in the hands of Ferguson, who then called all the parties in a process of multiple-pounding; in which it was

*Pleaded* for Leslie; By the judgment of the Court in the case of Thomson and Tabor *contra* Forrest, No 89. p. 4561, it was indeed found, "That assignees under a commission of bankruptcy had a sufficient title to compear and compete in the action;" but it was likewise found, "That the proceedings under the commission of bankruptcy did not bar the creditors of the bankrupts, whether their debts were contracted in England or Scotland, from affecting by