

1798. *June 2.*

The TRUSTEE for the Creditors of PETER FORRESTER, *against* The TRUSTEE for the Creditors of JOHN TURNER, and ALEXANDER MONTGOMERY.

No 279.
The commissioners chosen to assist the trustee on a sequestrated estate are not entitled to an allowance for their trouble.

At a meeting of the creditors of Peter Forrester, whose estate was under sequestration, it was proposed, that the commissioners who had been appointed to assist the trustee, in terms of 33d Geo. III. c. 74. § 28. should have an allowance from the funds, on account of the extraordinary trouble they had taken in the management, and the trustee was directed to apply to the Court to sanction the measure.

A petition was accordingly presented to the Lord Ordinary on the Bills, which was opposed by the Trustee for the creditors of John Turner, and by Alexander Montgomery, creditors of Forrester, who contended, that the office of commissioner was gratuitous.

The Court, upon advising the petition, with answers, &c. which they had ordered to be printed, were so clearly of this opinion, that they refused the petition, and found the creditors, who had advised the measure, personally liable in the expence of the application and opposition to it.

D. Douglas.

Fac. Col. No 77. p. 182.

1798. *June 15.*

ROBERT GENTLE and Others, *against* JOHN KIRK and JOHN STEEDMAN.

No 280.
In ascertaining the four kalendar months after bankruptcy, within which the poinder of a bankrupt's effects must be cited, under the 33d Geo. III. c. 74. § 6. the day of bankruptcy is excluded.

JOHN KIRK and JOHN STEEDMAN, creditors of Andrew Bennet who was insolvent, executed a poinding of his effects in August 1796.

On the 27th of that month, Andrew Bennet was incarcerated at the instance of another creditor, and thus rendered bankrupt in terms of the statute.

The 33d George III. c. 74. § 6. provides, under certain limitations, 'That no poinding of the moveables belonging to such bankrupt, used within sixty days before the bankruptcy, or four kalendar months thereafter, shall give a preference to such poinder; but that every other creditor of the bankrupt having liquidated grounds of debt, or decrees for payment, and summoning such poinder, before the said four months are elapsed, shall be entitled to a proportional share of the price of the goods so poinded.'

Robert Gentle, and certain other creditors of Bennet, brought an action against Kirk and Steedman, founded on this clause of the statute, and concluding for a share of the poinded goods.

The defenders were cited in this action on the 27th December 1796; and their defence was, that they had not been summoned within four months from Bennet's bankruptcy, as required by the statute.

The Sheriff found, 'That the application by the pursuers, claiming under

* the diligence used by the defenders, is not made within the time prescribed by law. No 280.

The pursuers having brought this judgment under review by advocacy, the Lord Ordinary found, 'That the pouding creditors were summoned before the four months from the date of the pouding were elapsed, and are therefore entitled to a proportional share of the price of the pouded goods, in terms of the act of Parliament, and under the deductions therein specified.'

In a reclaiming petition, the defenders

Pleaded, The day of Bennet's incarceration is to be reckoned the first day of the first kalendar month. The day on which the transaction took place is always taken into account, whether time be computed by years; No 160. p. 1075. Waddel against Salmond, Stair, v. 2. p. 871. *voce* DIES INCEPTUS; Durie, p. 130. Drummond against Lord Cunninghamhead, *voce* DIES INCEPTUS: Or by days; Fount. v. 2. p. 238. Blair against Magistrates of Edinburgh, *voce* DIES INCEPTUS. It follows, that the four kalendar months, within which the defenders should have been cited, expired at midnight on the 26th December, otherwise there would be five days bearing the same number in four kalendar months, which is impossible.

Observed on the Bench, This case is governed by the principle on which the judgment, in the case of Mercer against Ogilvie*, was decided in the House of Lords, 1st March 1796, (*voce* DEATH-BED.) It was there laid down, that in a challenge of a settlement, as on death-bed, the day on which the deed was executed was to be held as an indivisible point of time, not forming one of the sixty days, but merely the *terminus* from which they were to be counted. In like manner, the 27th August is not in this case to be held as one of the days of the four months, and consequently they did not expire till the 27th December at midnight.

THE LORDS refused the petition without answers. See DIES INCEPTUS.

Lord Ordinary, *Dunsinman*. For the petitioners, *Wm. Erskine*. Clerk, *Menzies*.
Davidson. *Fac. Col. No 84. p. 191.*

* * See M'Master, Inglis, and Co. against Campbell, 10th July 1788, *Fac. Col. No 30. p. 49.* (*voce* JUS TERTII, & *voce* PROCESS.)—A redeemable right of land was set aside at the instance of the creditors of the seller, as importing a conveyance *omnium bonorum*. The purchaser afterwards settled with the creditors, and continued to possess. Parties who, subsequent to the reduction, became creditors of the seller, were found not entitled to carry on a process of sale of the subject, as the property of their debtor.—The reduction benefited only those who were creditors at the time.

* 10th December 1793, *Fac. Col. No 84. p. 181.*

Whether annualrent due to creditors upon a bankrupt estate after a sale. *See* ANNUALRENT.

The effect of an English commission of bankrupt, in competition with arrestments. *See* No 81. p. 753. and No 82. p. 756.* *See* FOREIGN.

Effect of bankruptcy with regard to bills of exchange. *See* BILL of EXCHANGE.

Operation of compensation, and application of the right of retention in cases of bankruptcy. *See* COMPENSATION. RETENTION.

Exception of bankruptcy how proponable. *See* COMPETENT.

Competitions in consequence of bankruptcy. *See* COMPETITION.

See CREDITORS of a DEFUNCT.

Effects of deeds on deathbed executed by persons insolvent. *See* DEATHBED.

See DEBTOR and CREDITOR.

Consequences of one creditor excluding others by diligence. *See* DILIGENCE.

Cui incumbet probatio of bankruptcy, in matters respecting tutory and curatory. *See* DILIGENCE, (prestable by tutors and curators.)

Competition liferent, escheat with creditors. *See* ESCHEAT.

Competition of creditors claiming under a faculty in their debtor. *See* FACULTY.

Effect of the Lord Chancellor's certificate of conformity. *See* FOREIGN.

Foreign trust-deed in favour of creditors. *See* FOREIGN.

Competition creditors with the donatar of forfeiture. *See* FORFEITURE.

Latent deeds. Fraudulent concealment. Purchasing goods in a state of known insolvency. Consequence of a woman being induced by fraud to marry a bankrupt. *See* FRAUD.

See HEIR *cum beneficio*.

Effect of a sale at the instance of an apparent heir, as to creditors. *See* HEIR APPARENT.

* These two cases relative to this subject, and referred to *voce* FOREIGN, are reported *voce* ARRESTMENT, as in the Faculty Collection. There will be found, *voce* FOREIGN, important corrections on these statements.

Competition landlord with creditors. See HYPOTHEC.

Effect of the hypothec competent to writers and agents in cases of bankruptcy. See HYPOTHEC.

Implied conditions in affignations *omnium bonorum*. See IMPLIED CONDITION.

See INHIBITIONS.

Disposition of an heritable subject to trustees, for behoof of creditors. See HERITABLE and MOVABLE.

The King's privileges as a creditor. See KING.

Creditors preferable to a special legatary must affign for his relief. See LEGACY.

Summary warrant to apprehend a bankrupt who has fled. See MEDITATIO.

What sort of creditors have the benefit of the passive title of Lucrative Successor for *post contractum debitum*. See PASSIVE TITLE.

Indefinite for security of debts to be contracted. See PERSONAL and REAL.

Right of creditors to personal faculties and privileges of their debtors. See PERSONAL and TRANSMISSIBLE.

Cessio Bonorum. Suspension upon a disposition *omnium bonorum*. Act of Grace. See PRISONER.

How the oath of a bankrupt may affect his creditors. See PROOF.

What proof requisite of the onerous causes of deeds, in cases of bankruptcy. Who are conjunct and confident persons. See PROOF.

Proof of the existence of a trust, before the act of 1696, and after that act. See PROOF (proved or not proved.)

Heirs and children, as creditors by contracts of marriage, &c.; and in competition with other creditors. See PROVISIONS TO HEIRS and CHILDREN.

See RANKING and SALE.

Right in security of debts to be contracted. Indefinite security. See RIGHT in SECURITY.

See SANCTUARY.

BANKRUPT.

See SEQUESTRATION.

The effects of bankruptcy relative to copartneries, and the shares and debts of the individual partners. *See SOCIETY.*

Consequences of the bankruptcy of a co-obligant. *See SOLIDUM ET PRO RATA.*

Whether the bankruptcy of a tenant affords a ground for reducing the tack
See TACK.

How creditors affected by an entail. *See TAILZIE.*

Title to pursue reduction on the head of bankruptcy. Title to pursue a process of sale of a bankrupt's lands. *See TITLE TO PURSUE.*

Whether a trust falls by the bankruptcy of the trustee. *See TRUST.*

Provisions in favour of children when reducible as fraudulent. *See FRAUD.*

** There is in the course of preparation an Appendix to this Title, in which many Decisions of a more recent date, to be found in no other Collection, will appear: Also several cases which have occurred in England, selected as tending to elucidate the general principles which regulate the subject. Upon this Appendix, which regards so important a branch of the Law, much labour has been bestowed, much research has been necessary; but more are still requisite. It would have been improper to attempt to include hurriedly, in the ordinary course of the Publication, the materials which it contains.