

The Lord Ordinary found, ‘ That iniquity or injustice, how-
 ‘ ever apparent, affords no ground for setting aside a decree-
 ‘ arbitral ; that the submission in question was sufficiently ample,
 ‘ and included every subject of claim or dispute which existed
 ‘ between the parties ; and that in the agreement which was sub-
 ‘ scribed by the parties when the renunciation was granted, every
 ‘ obligation incumbent on the proprietor, as constituted by the
 ‘ leases or otherwise, was referred to arbitration, if the parties
 ‘ themselves could not adjust them ; and the submission after-
 ‘ wards entered into by the parties was sufficiently broad to em-
 ‘ brace all the points decided by the decree-arbitral ;’ and there-
 fore repelled the reasons of reduction, and assoilzied Drummond.
 Against this interlocutor Pitcairn presented a petition ; but the
 Court refused it, without answers, on the 24th May 1822.*
 Pitcairn then appealed ; but the House of Lords ‘ ordered and
 ‘ adjudged, that the appeal be dismissed, and the interlocutors
 ‘ complained of affirmed.’

May 20. 1825.

Appellant's Authorities.—4. Ersk. 3. 32. ; Steel, June 22. 1809, (F. C.)

A. MUNDELL—C. ARNOTT,—Solicitors.

W. STIRLING and Others, Appellants.

No. 25.

Mrs HOUSTON and Others, Respondents.

Jurisdiction—Foreign.—An Englishman, residing in England, having died indebted to certain parties in Scotland, arising out of mercantile transactions ; and being creditor of persons resident in Scotland, against whom he had raised actions in the Court of Session ; and having nominated executors, who administered in England, claimed in a sequestration, and sisted themselves as parties to the actions, but did not confirm in Scotland ; and the Scottish creditors having obtained from the Judge-Admiral letters of arrestment jurisdictionis fundandæ causa against the executors, and thereupon arrested in the hands of the Scottish debtors to the defunct ;—Held, (affirming the judgment of the Court of Session), That the arrestment was inept to the effect of founding a jurisdiction against the executors.

THE late James Henry Houston, merchant in London, was
 creditor of various persons in Scotland, and particularly of Allan
 Scott and Son, merchants in Glasgow, (on whose sequestrated
 estate he claimed for upwards of L.14,000), and also of the
 Banton Coal Company, and Walter Logan, a partner of that
 Company. Against these parties respectively he raised actions in

May 20. 1825.

2^D DIVISION.
 Lord Reston.

* 1. Shaw and Ball. No. 488.

May 20. 1825. the Court of Session. On the other hand, he was indebted to several persons in Scotland, and particularly to the appellants, Stirling and others, who were merchants in Glasgow. He died in October 1814, leaving a will, by which the respondent, Mrs Houston, was named his sole residuary legatee, and she, together with John Peter Houston, Benjamin Shaw, and Stephen Nicolson Barber, were appointed his executors, all of whom resided in England, or elsewhere abroad. Immediately after Houston's death the respondents proved the will, and obtained letters of administration from the Prerogative Court of Canterbury; but they did not apply to be decerned executors in Scotland, nor did they obtain any confirmation of the effects situated there.

In virtue of the will and these letters of administration, the respondents sisted themselves as parties in the actions depending in the Court of Session, and claimed a dividend upon the estate of Allan Scott and Son, which was allotted but not paid to them.

In the meanwhile the appellants, as creditors of Mr Houston, with the view of obtaining a confirmation qua executors-creditors, presented a petition to the Judge-Admiral, for letters of arrestment jurisdictionis fundandæ causa against the respondents, which they accordingly obtained. These letters bore, that as the appellants were about to raise action against the respondents, who represented the late Mr Houston, and as they were 'foreigners, and do not reside within the jurisdiction of the Judge of our said High Court, and have goods and effects in the hands and custody of several persons in this country, which they intend to withdraw, to the complainers' manifest defraud and prejudice, therefore it is necessary to have letters of arrestment to found a jurisdiction.' The will accordingly was, 'to arrest all goods, &c. belonging to the said John Peter Houston, Elizabeth Houston, Benjamin Shaw, and Stephen Nicolson Barber, jurisdictionis fundandæ causa;' in virtue of which an arrestment was executed in the hands of the trustee of Allan Scott and Son, as being addebted 'to the said John Peter Houston,' &c. The appellants then raised an action before the Admiralty Court, founding on this arrestment, and concluding for decree against 'the said John Peter Houston, as representing his said deceased brother on one or other of the passive titles as aforesaid, and the said Mrs Elizabeth Houston, Benjamin Shaw, and Stephen Nicolson Barber, as executors and administrators foresaid.' The summons was executed at the market-cross of Edinburgh,

pier and shore of Leith, and decree in absence was pronounced and extracted. May 20. 1825.

Founding on this decree the appellants obtained an edict from the Commissary Court for citing 'the executors-testamenters, spouse, bairns if any be, and intromitters with the goods and gear of umquhile J. H. Houston,' &c. which was executed by a macer at the parish church of St Giles; and no appearance having been made, the appellants were decerned and confirmed executors-creditors, and as such entitled to the debts due to him in Scotland.

Of these proceedings the respondents were not aware until a claim was lodged by the appellants in a multiplepinding brought by one of the debtors of Mr Houston, and in virtue of which the appellants claimed a preference.

The respondents then raised an action of reduction of the decret obtained before the Judge-Admiral, and of the confirmation, in support of which they maintained,—

1. That as the funds which had been arrested in order to found a jurisdiction against them had never been confirmed by them, and therefore remained in bonis of Mr Houston, and consequently could not be regarded as their funds, no jurisdiction had been competently found against them, so that the decree and the whole subsequent proceedings were null and void; that although they had no doubt claimed upon the estate of Allan Scott and Son, yet this could not have the effect to take the fund out of the hæreditas jacens of Mr Houston, and transfer it to them; and that as the decree had been extracted, it was not now competent to restrict it to one cognitionis causa.

2. That, even supposing a jurisdiction had been competently founded against them, yet, as they were foreigners, and not liable to be called to appear in any Inferior Court, and as the debt was not of a maritime nature, and the Court of Admiralty was (except in such cases) an Inferior Court, and had no power to cite foreigners at pier and shore in relation to cases not maritime, the decree which had been pronounced was inept. And,

3. That as the appellants were aware that the respondents were the executors of Mr Houston, they were bound to have cited them specially, and not in the general terms contained in the edict.

On the other hand, it was contended by the appellants,—

1. That although the respondents had not confirmed the effects which had been arrested, yet they had lodged a claim in the sequestration, and so held themselves forth as having right

May 20. 1825. to them; and that, were their plea to be sustained, it would have the effect of preventing Scotch creditors from ever obtaining justice, in their own Courts, against the foreign executors of their debtor who had funds in this country; but that, at all events, they were entitled, on the principle of the case of M'Crills, to have the decree restricted to one cognitionis causa.

2. That the Court of Admiralty had, by long established practice, a jurisdiction both in maritime and commercial cases over foreigners who were cited in the manner which had here taken place. And,

3. That the procedure before the Commissaries was perfectly correct, and the appellants were not bound to call the respondents in any other terms than those which they had done.

The Lord Ordinary 'repelled the objections to the regularity of the procedure before the Admiralty and Commissary Courts; found that the nomination of the pursuers as executors, and steps taken by them, form no legal objection to the confirmation of the defenders, whose debts are not disputed;' and therefore assoilzied them. And to this interlocutor he adhered, 'in respect that it had been uniformly averred by the defenders, and is not denied by the pursuers; that the citation of the Commissary Court was in the usual terms.'

The respondents having reclaimed to the Court, their Lordships 'repelled the objections to the form of serving the edict of the Commissary Court, and allowed the defenders to give in a minute stating more fully the practice of the Admiralty Court in cases similar to the present one, specifying the cases on which they found their allegation as to the practice;' and thereafter 'found, that the arrestments jurisdictionis fundandæ causa were inept, and that the decrees which followed upon them were null and void;' and therefore decerned in terms of the libel. And on the 3d of February 1824 they refused a petition without answers.*

Stirling and others then appealed, and in addition to their former pleas maintained, that as the respondents had sisted themselves as parties in processes depending in the Court of Session, they were barred by the principles of reconvention from objecting to the jurisdiction; but the House of Lords 'ordered and adjudged, that the appeal be dismissed, and the interlocutors complained of affirmed, with L.100 costs.'

* 2. Shaw and Dunlop, No. 634.

Appellants' Authorities.—Ashton, Hodgson and Co. v. M'Crill, June 17. 1773, May 20. 1825. (4835.); 1. Ersk. 2. 19.; Mansfield, Ramsay and Co. June 17. 1795, (2594.); 54. Geo. III. c. 137. § 32.; 2. Bell, 347.

Respondents' Authorities.—4. Stair, 19.; 2. Ersk. 12. 47.; 1. Ersk. 2. 18.; 2. Bank. p. 393.; 3. Ersk. 9. 37.; 3. Stair, 8. 62.; 3. Ersk. 9. 37.; Haliburton, June 25. 1663, (16,090.)

J. CAMPBELL—GREIGSON and FONNERENE,—Solicitors.

JOHN DUGUID, Appellant.

No. 26.

Mrs SUMMERS or MITCHELL, and Mrs JANET KYNOCK
or MITCHELL, Respondents.

Oath of Calumny—Stamp.—A party having raised an action on a bond granted to his father in 1782, for the principal sum and interest from that date; and the defenders having alleged that the whole interest had been paid, but being unable to produce stamped receipts for it prior to 1818; and having required the party to emit an oath of calumny, and he having declined to depone that he believed the interest was due, but having sworn merely that money to the extent sued for was due; and the defenders having paid the principal sum;—Held, (affirming the judgment of the Court of Session), 1. That they were entitled to be assoilzied; and, 2. Question raised, but not decided, as to the effect to be given to unstamped receipts.

IN 1782 George Laing, mason in Aberdeen, proprietor of a piece of ground in that town, borrowed from the late John Duguid, father of the appellant, L. 200, for which he granted an heritable bond over the ground. This property was acquired in 1785, subject to the heritable burden, by James Mitchell, father of the respondent Mrs Summers, and husband of the other respondent Mrs Kynock or Mitchell. He died about 1816, having conveyed his property to his wife in liferent, and to his daughter in fee. In June 1818 Duguid died, and was succeeded by his son, the appellant, a captain in the Aberdeenshire militia. The respondents alleged that the whole interest had been paid till the 20th of June of that year inclusive; tendered payment of the principal sum to the respondent in September thereafter; and required a discharge from him. The appellant, not being satisfied that all the prior interest had been paid, declined the offer; and the respondents thereupon brought an action, concluding that he should be ordained to receive payment of what was due to him, and grant a discharge and renunciation of the bond. He defended himself at first on the ground that he was entitled to the benefit of the *annus deliberandi*, but

May 25. 1825.

1ST DIVISION.
Lord Meadowbank