

courts in Scotland extended both to Captain Wilson and to the bonds arrested : As, therefore, the arresters have used complete diligence, according to the law of Scotland, prior to the assignation, they must be preferred to the assignees.

No 87.

' THE LORDS preferred the assignees under the commission of bankruptcy, with respect to the English debts, that is, the debts contracted after the English form, or payable in England.'

Reporter, *Justice-Clerk.* For the Legal Assignees, *J. Craigie, A. Pringle, & Advocatus.*
Alt. *Miller & Ferguson.*

N. B. Other questions occurred in this case, viz. *1mo*, As to the effect of an arrestment of English debts, used in the hands of persons not natives of Scotland, but casually residing there; *2do*, As to the effect of arrestments used at the market-cross of Edinburgh, and pier and shore of Leith, against natives of Scotland residing in other countries; *3tio*, Whether a person born in Scotland, but who had fixed his residence in another country, remained perpetually liable to the jurisdiction of the courts in Scotland *ratione fori originis*? But the court seemed to wave the consideration of these questions, and to give judgment on this ground, that the bonds arrested were to be considered as English debts.

D.

Fac. Col. No 133. p. 200.

1759. March 6.

JAMES CRAWFORD, and Others, Creditors of ROBERT and JOHN DUNLOPS,
against JOHN BROWN and JAMES CRAW, Legal Assignees under the Commission of Bankrupt.

ROBERT and John Dunlops carried on a company trade at Rotterdam. In June 1755 John Dunlop went over to London; and soon after, in July 1755, his partner stopped payment. A petition was given in to the Lord Chancellor on the 2d August 1755, for a commission of bankruptcy; which was immediately issued; and, upon the examination of two witnesses, who deponed to an act of bankruptcy on the 14th July 1755, the commissioners found, that John Dunlop, before the date and issuing forth of the commission, did become bankrupt. On the 23d August, they appointed John Brown and James Craw assignees to the bankrupt's effects.

James Crawford and others, creditors of the company, used arrestments in the hands of several persons who were debtors to the company, in Edinburgh, Glasgow, Perth, and Dundee, posterior to the 14th July 1755, but before the application for a commission of bankruptcy.

The assignees under the commission of bankruptcy brought an action against the company's debtors. Appearance was made for the arresters; and a competition ensued between them and the assignees.

No 88.

In a competition between arresters of debts due in Scotland to a bankrupt, and legal assignees under a commission of bankruptcy, the arresters were preferred, the arrestments having been used prior to the commission of bankruptcy, though posterior to the first act of bankruptcy.

No 88.

Pleaded for the arresters; That they had used the only proper diligence allowed by the law of Scotland to affect the debts due to the company: That this diligence was completed before the commission of bankruptcy in England was applied for: That their diligence could not be disappointed by after proceedings in another country; especially as these proceedings were, in this case, carried on in a collusive manner, and the commission of bankruptcy issued upon a false suggestion, as if the debtor had been a residenter in England, which he truly was not; *2dly*, That the deeds affected by the creditors' arrestments were due to John and Robert Dunlops and company; but the commission of bankruptcy was taken out against John Dunlop only, which could not affect the debts due to the company, but only John Dunlop's share of the free remains of the co-partnery stock.

Pleaded for the assignees under the commission; That John Dunlop had resided at London for four weeks before he absconded; which was sufficient to entitle his creditors to apply for a commission of bankruptcy against him: That by the law of England, the effects of the bankrupt are vested in the commissioners and their assignees, from the first act of bankruptcy, which happened, in this case, before any of the arrestments were used by the competing creditors; and therefore the assignees ought to be preferred to these arresters, though their diligence was executed before the application for the commission: That this was so determined in the competition of Captain Wilson's creditors, No 87. p. 4556.

2dly, Although the commission is only taken out against John Dunlop; yet, as partner, he was entitled to recover the whole co-partnery effects, to be applied for payment of the debts. He could have voluntarily assigned them to trustees for that purpose; and the legal assignation under the commission must have the same effect with his voluntary deed.

Replied, The whole of the debts arrested are subject to the jurisdiction of the courts in Scotland, and to none other. None of the debts were either contracted in England, or payable there. The effect given to commissions of bankruptcy in England, by positive statute, can have no effect beyond the jurisdiction of their law, no more than the retrospect established in Scotland by the act 1696 can be effectual in England or Holland, or than the retrospects established by ordinances in France can be effectual here or in England.

The decision in the competition of Captain Wilson's creditors does not apply. The Court, in that case, preferred the assignees only with respect to debts contracted after the English form, or payable in England; because such debts were considered as in some manner situated in England, and subject to the jurisdiction of the courts there: But with respect to Scots debts, a contrary judgment was given, and the arresters were preferred in the only case where it was tried, Ogilvie *contra* the Creditors of Aberdeen, No 86. p. 4556. Besides, the commission was fairly taken out against Captain Wilson, who was actually settled in England.

Duplied, It can make no difference, that the debts in this case were contracted in Scotland, and payable there; because it is a general maxim, That *mobilis non habent sequelam, sed sequuntur personam*; which must apply with greater force to debts which are considered as *jure incorporalia*; and therefore this competition must be governed by the statutes of England, where John Dunlop resided when the commission was taken out against him.

No 88.

‘THE LORDS preferred the arrestments in the hands of the company’s debtors resident in Scotland, preceding the 2d August 1755, to the legal assignees.’

Reporter, *Lord Minto*. For the Arresters, *Miller, Ferguson*. Alt. *Macintosh*.
W. J. *Fol. Dic. v. 3. p. 226. Fac. Col. No 179. p. 319.*

1762. July 2. & 1764. December 20.

THOROLD, &c. Assignees of THOMSON and TABOR, *against* FORREST and SINCLAIR

No 89.

THE LORDS found, That the assignees under a commission of bankruptcy in England had a title to compare and compete in the Court of Session; but that the proceedings under the commission did not bar the creditors of the bankrupt, whether their debts were contracted in England or Scotland, to affect their debtors effects situated in Scotland, or debts due to them by persons there residing, by legal diligence; and also found, that such of the creditors-arresters against whose diligence no objections were made, were preferable to the assignees.

Fol. Dic. v. 3. p. 226. Fac. Col.

* * The report of this case, No 81. p. 753, taken from the Faculty Collection, where it is erroneously dated 5th March 1767, does not state, with sufficient precision, all the circumstances, and what was actually done by the Court. The principle which there seems to have been adopted, has been, in the late case of Read against Strothers, (1st July 1803), entirely passed from, and the assignees under a commission of bankrupt, have been preferred. In the report of this last mentioned case, to be given at large in the Appendix to this Title, the errors in the case of Thorold, and in that of Pewtress immediately following, will be particularly pointed out.

1768. July 14. PEWTRESS and ROBERTS *against* THOROLD, &c.

No 90.

DURING the dependence of the competition between Thorold, &c. and Forrest and Sinclair, No 89. p. 4561, certain arrestments having been used in the hands of William Cuming banker in Edinburgh, in order to attach sums which he had recovered belonging to the bankrupts, in consequence of bills drawn or indorsed by them in his favour, the LORDS preferred the arresters.

Fol. Dic. v. 3. p. 226. Fac. Col.

* * See This case No 82. p. 756.