

1775. *November* . ROBERT DICK *against* HIS CREDITORS.

ROBERT Dick having pursued a process of *cessio*, the Lords, November 1775, pronounced this interlocutor:—"Find the pursuer entitled to the benefit of this process of *cessio*: Ordain him to give in a disposition *omnium bonorum*, and allow his oath to be taken, in terms of the Act of Sederunt; and, for that effect, grant commission, &c. But in respect it appears that the pursuer has not failed in his circumstances through misfortune, but through dealing in illicit trade, and smuggling; therefore refuse to dispense with his wearing the dyvor's habit, and supersede further procedure till his oath is reported, and the disposition given in."

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1777. *July 29.* LIEUTENANT JAMES ENGLAND *against* HIS CREDITORS.

LIEUTENANT James England, late of the 67th regiment, an officer upon half pay, having raised and insisted in a process of *cessio* against His Creditors; this point occurred, Whether a pursuer in this situation is entitled to the benefit of the *cessio*, unless he shall assign and make over his half pay, or such part of it as the Court should think reasonable, in favour of his creditors; (see Commission of Bankruptcy in England, *Cathcart* against *Blackwood*.) Upon this point the Lords having demurred, they appointed memorials,—and this day, (28th June 1777,) they appointed a hearing. The point had been adjudged, 5th March 1768, in the case, *Grierson* against *His Creditors*, *New Coll.* in favours of the pursuer; and again in the case of *Lieutenant Farie*, 1774; and also, as it was said last winter, in the case of *Lieutenant Ferguson*: but still the Lords demurred, and desired to hear further,—and ordered new memorials. This day, 29th July 1777, the Lords, on advising the memorials, found that the pursuer is not entitled to the benefit of the process of *cessio*, unless he shall assign to his creditors his half pay, to the extent, at least, of L.20 *per annum*. The whole was L.38.

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1776. *August 3.* THOMAS FALCONER *against* HIS CREDITORS.

IN a process of *cessio*, Thomas Falconer, merchant in Glasgow, against His Creditors; it appeared that Falconer, while labouring in his circumstances, had applied to the Court for a sequestration of his effects on the late statute; which the Court granted, but, as usual, superseded further procedure for ten days: however, no further procedure was had,—Falconer making no further application, but allowing the matter to lie over, while, in the meantime, he remained in possession; and, being a shopkeeper, disposed of his goods, and converted the price, as he received it in retail, for the use of his family. The Lords, conceiving this of dangerous precedent, and as a contempt of the autho-

rity and jurisdiction of this Court in a high degree, refused him the benefit of the *cessio*, and found him not entitled thereto.

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1772. HAMILTON, M'ALISTER, and COMPANY *against* WILLIAM BORTHWICK.

HAMILTON, M'Alister, and Company, merchants in Edinburgh, insisted in an action against William Borthwick, for payment of an account of cloth furnished to him by them. Borthwick denied furnishing, and further pleaded, in defence, a posterior decret of *cessio bonorum*, in which they had been called. The company obtained decret; which Borthwick suspended. The suspension came before Lord Coalston. His Lordship "found the letters orderly proceeded, and decerned; reserving to the suspender all defences competent to him, on his decret of *cessio bonorum*, if the charges shall hereafter proceed to execution against his person; and reserving to the chargers to show cause why the said decret should not be effectual against them."

The chargers sought expenses; which the Ordinary refused: against which they reclaimed to the Lords. The Lords refused the bill; at the same time, in their arguing, approving of the interlocutor of the Ordinary *in causa*.

From this decision it would seem that a decret of *cessio* is simply a guard against personal execution, but no bar to a creditor's affecting or obtaining decret to affect the after *acquisita* of the debtor who had obtained it.

The point again occurred, and was reported by Lord Kennet, 11th July 1778, when the Lords gave the same opinion, *viz.* That a *cessio* saved only from personal diligence; at the same time, they thought, that if, in a *cessio*, a debtor had a *beneficium competentiæ*, though the extent is not well determined, he would have the same as to after *acquisita*; but then that ought to be no stop to the diligence of a creditor; leaving the debtor, when the case happened, to make it out as he best could,—*Donaldson against Reid*. They did not determine positively as to the *beneficium competentiæ*.

This point again occurred in the case:—

1775. *February* . JEAN THOMSON *against* ANDREW CALENDAR.

In this case, Calendar defended himself before the Sheriff of Edinburgh, against an action brought by Thomson on a decret of *cessio*, in which her author had been called. The Sheriff pronounced this interlocutor, 24th March 1773:—"In respect of the decret of *cessio*, which is of a date posterior to the bill libelled on, and that the drawer of the bill was summoned to the action on which it proceeded, and also, that it is not alleged that the defender's circumstances are meliorated; sustains the defences, assoilyies the defender, but finds no expenses due."

Pleaded in an advocacion, That this was a mistake in fact, the pursuer's averment being, that Calendar's circumstances were greatly meliorated. Lord Stonefield however refused the bill; but, in a reclaiming petition, the Lords were of opinion that the cause should be remitted to the Sheriff, with an instruction to