

and that by recovery of the money due to Thomson and Tabor, Cuming, before the new arrestments were laid on, came to have effects in his hands, which removed the objection; and the plea of litigiousity was no bar to legal diligence.

The Lords preferred Pewtress and Roberts to the sums in William Cuming's hands, to the amount of their draughts from Thomson and Tabor.

Against this interlocutor, there was a reclaiming petition for the assignees, upon advising which with answers, (22d November 1768), the Court adhered. The decision went entirely upon the new arrestments, used after Cuming had recovered the proceeds of the bills. The implied assignation before that period, was held to be insufficient.—See the note p. 757. where the case immediately below is referred to.

*W. M. M.*

1776. August 6.

JACOB and JOHN RHONES *against* JOHN PARISH and JOHN HENRICH SCHREIBER.

JOSEPH TURNER, merchant in Bremen, failed in the year 1772.

By the law of Bremen, the effects of the Bankrupt are taken into the management of the Senate of Bremen, and the creditors appearing before the Senate, chuse a certain number of the Senators as trustees on the bankrupt estate.

Messrs. Parish and Schreiber being creditors of the bankrupts, used arrestments in the hands of certain persons in Scotland, who were consignees of a quantity of yarn belonging to the bankrupt.

The Messrs. Rhones and others, trustees for the creditors of the bankrupt, having claimed to be preferred in that character against the arrestments used by Messrs. Parish and Schreiber, it was contended in favour of the arresters, that the trust right founded on by the pursuers could have no effect *extra territorium*, and could not take away the preference of an arrestment in Scotland.

After some procedure, the Lord Ordinary pronounced the following interlocutor: “ Finds, *primo*, the respondents having given their vote for the choice of the trustess, or having proved their debts before the trustees, and made a demand for payment, is sufficient evidence of their having acceded to the trust right, which it seems by the law of Bremen is vested in certain members of the Senate, chosen by the creditors, and that accession precludes them from taking separate measures in this country in order to obtain a preference over the rest of the creditors; *Secundo*, that the facts above mentioned inferring their accession to the trust right are to be held as proved by the certificates produced, unless the respondents will undertake to prove that the facts set forth in these certificates are not true: Therefore alters the former interlocutor, finds no farther proof on the part of the trustees necessary, and therefore prefers the said trustees to the sums in the hands of the raisers of the multiplepounding, and decerns and declares accordingly.”

No. 1.

No. 2.

Creditors of a bankrupt acceded to a trust in favour of the whole creditors. The trustee found preferable, such acceding creditor using diligence, even as to effects situate in a foreign country.

See No. 103. p. 4593.

No. 2. The Court, upon advising a petition and answers, adhered to the Lord Ordinary's interlocutor; and afterward another petition and answers having been given in, and after a hearing in presence upon the effect of the accession, the Court adhered to their former judgment.

Lord Ordinary, *Monboddo.* Act. *Wright, Henry Erskine* Alt. *Craig.*

*J. W.*

1776. August 7. BENJAMIN GLOVER and Others, against ROBERT VASIE.

No. 3.

Whether assignees under an English commission of bankruptcy have a right of action entitling them to recover the bankrupt's effects in Scotland, and to compete for them? and whether other creditors of the bankrupt are barred from competing with the assignees, or claiming a preference on separate diligence used by themselves against the bankrupt's effects?

IN the year 1770, John Bedford and Son, merchants in Leeds, became bankrupt. At this period, some effects belonging to them were situate in Scotland; and Robert Vasie, one of their creditors, having arrested in the hands of one of their debtors in Scotland, was preferred by the Lord Ordinary in a process of furthcoming *secundo loco* to the sums in the hands of the arrestees, another creditor having previously used arrestments.

Afterward the assignees under a commission of bankruptcy awarded in England against Bedford and Son, having objected to Vasie's preference, both that as being a native of England he had no title to compete with them, and that he had received a dividend under the commission of bankruptcy;—it was on his part pleaded:

There are two questions here to be considered; *first*, Whether assignees under a commission of bankruptcy have a right of action entitling them to recover the bankrupt's effects in Scotland, and to compete for the same? and, *secondly*, Whether, this being granted, an Englishman claiming under an English debt, by having drawn a dividend of the bankrupt's effects on account of said debt under the said commission, be barred from competing with the assignees, or claiming preference under his arrestment?

On the first point it was argued, that a commission of bankruptcy is entirely the offspring of the statute law of England, and is even there considered as an innovation on the common law of the land, of which the effect is not to be extended by any construction or implication. Law for and against Bankrupts, page 59, 71, 96. Blackstone, vol. 2. p. 479. It cannot accordingly have any operation *extra territorium statuentis*. Voet. De Statutis, par. 11. Principles of Equity, p. 287. Erskine, B. 3. T. 2. § 42. Nay, besides the authority of the general principles of law, the operations of a commission of bankruptcy are limited, by the very statutes to which it owes its existence, to the territories of England. Law for and against Bankrupts, p. 52. Atkyn's Reports, p. 87. A commission of bankruptcy, besides, transfers the heritable as well as the moveable estate of the bankrupt, and even transfers an entailed estate. Bacon's Abridgment, vol. 1. p. 258. Blackstone, vol. 2. p. 485, 486. And the

See No. 91. p. 4562.