No. 15.

The adjudgers

Answered: If the argument be well founded, that if a summons of adjudication have at any time been executed, this must be held to be the first adjudication, it seems to lead to this conclusion, that it is of no consequence whether the adjudication was raised lately or twenty years ago; whether the debtor was in flourishing circumstances, *vergens ad inopiam*, or bankrupt; whether the debt was paid and discharged, or unpaid and outstanding; whether it was a well or ill founded process of adjudication; whether it was dismissed or sustained; whether it was immediately dropped after being brought, or carried on till decree; whether the debtor had sufficient defences to cast the summons on informalities, or upon the merits of the case; whether other creditors appeared in it, or let it be dropped without taking notice of it. It would be so difficult to say when the first adjudication against any estate had been led, that the benefit of the *pari passu* preference would be lost, and each would adjudge for himself, and thus each adjudication would come to be ranked again according to its date: No one could be sure but that some steps towards an adjudication may have been at some time or other taken and insisted in, which would deprive that one to which he could be conjoined of the name and privilege of a first adjudication.

This case, it appeared to the Court, had been omitted among the provisions of the bankrupt statutes; but it likewise appeared, that in reason, and according to the spirit of those statutes, it was to be held that here the adjudication first raised, had fallen to the ground, in respect of its being discharged, or not insisted in; and therefore, it was found that the adjudication of Andrew was to be held as the first, and consequently, that those creditors, whose summonses had been conjoined with it were preferable, (24th November 1801.)

To which judgment, on advising a petition with answers, they adhered, (5th March 1802.)

Lord Ordinary, *Ankerville.*	For the Postponed Creditors, *Solicitor-General Blair,*
M. Rose, G. J. Bell.	Agent, *K. Mackenzie,* W. S.
Alt. *J. Clerk, Duff.*	Agent, *Ja. Watson,* W. S. Clerk, *Menzies.*

F. *Fac. Coll. No. 34. p. 69.*

1802. *March* 10. WILKIE'S Creditors, *against* WILKIE.

No. 16.
A sequestration suspended till an offer of composition should be considered by the creditors.

ON 17th October 1801, Wilkie's estate was sequestrated, and he was ordained (26th January 1802) to make over all his effects to the trustee on or before the 12th of February, in the usual form; his public examinations were fixed to take place on the 12th and 26th of that month. Having shown an unwillingness to execute the disposition of his effects, the trustee for his creditors required him to do so on 10th February, under form of instrument: Then, as well as at his first examination on the 12th, he positively refused to dispone.

In this situation, the trustee applied by petition to the Court, founding upon § 23. of 33d Geo. III. C. 74. which enacts, "That if the bankrupt shall, *with-" out reasonable cause*, neglect or refuse *to obey such order*," (to dispone to the trustee), "the Court may punish him by imprisonment." And it prayed, to have Wilkie committed to jail, if he persisted in refusing to sign the disposition in favour of his creditors.

Before this application was taken up by the Court, a petition was presented by Wilkie, giving such a statement of his affairs, as he proposed to lay before his creditors at his second examination; which would prove to them that he was not insolvent, although, from temporary embarrassments, a sequestration had been awarded against him. The opposition by his creditors prevented this from being recalled; but he craved that matters might be kept as they were, till the meeting after the second examination, as it is then only that by the statute proposals for a composition can be received: And the proposal in this case will be, that the full amount of the debts, interest and expenses, shall be paid, and that this shall be done likewise six months before the statute authorises the trustee to make any dividend. This, Wilkie contended, was a *reasonable cause*, according to the expression of the statute, for his declining to convey his estate to the trustee, and was sufficient for the Court to recal, at least to decline enforcing the order for his disponing for the present.

It seemed to be the first time that this question had arisen on the bankrupt act, and it was strenuously urged by the Lord President and some other of the Judges, that this interpretation of the phrase in section 23. *reasonable cause*, given by the bankrupt, was not the meaning intended by the Legislature; that this section referred entirely to the power of disponing or conveying, and applied to those cases only where it was not in the power of the bankrupt to fulfil the appointment of the Court, as where the lands were entailed, or where any other such impediment occurred. This was the only reasonable cause ever intended by the statute; for as to all offers of composition or dividends, these are regulated by other clauses of the act, and are not comprehended under this section 23. which relieves the bankrupt only from the penalties of disobedience, when compliance has not been in his power. After his second examination, offers of composition may be made, and caution for payment may be given; and if these are accepted by the creditors, it may be proper for him then to petition the Court for recalling the sequestration. Since October, he has had sufficient time to settle with his creditors; and if the application were to be successful upon a mere hypothetical statement of his effects, especially when there is no concurrence by any of the creditors, in all cases the same tale would be told, and the act could never be carried into execution.

But it was the opinion of the majority of the Court, that the creditors could not qualify any damage by delaying to enforce the order to dispone till the second meeting, when they would very probably be satisfied with the offers of the bankrupt, and concur with him in recalling the sequestration; that this was

No. 16. a reasonable cause in the meaning of the statute, which therefore left it in the discretionary power of the Court to grant a reasonable indulgence.

Accordingly, the Lords granted the delay.

For the Creditors, *A. Campbell*, junior. Agent, *A. Cunningham*, W. S.
For Wilkie, *H. Erskine*, *G. J. Bell*. Agent, *Th. Martin*. Clerk, *Sinclair*.

F. *Fac. Coll. No.* 37. *p.* 77.

1802. *May* 27. KEIR *against* DICKEY.

No. 17.
Sequestration not applicable to the case of of a foreign trader having effects in Scotland.

LAURENCE KEIR, a native of Perthshire, settled early in life in London as a merchant; but his connection with this country led him to be much engaged in transactions in the Scotch markets. When his affairs became embarrassed, his creditors proceeded to attach his effects in this country, consisting of debts due to him. To prevent them from obtaining a preference in this way, he applied, in conjunction with Lyal, Petrie and Company, merchants in Montrose, for a sequestration of his estate within Scotland, for the benefit of all his creditors. This application was opposed by Henry Stewart Dickey, one of the arresting creditors, and was refused, (10th March 1802).

Keir reclaimed, and

Pleaded: The inconvenience which resulted from the mode of obtaining preferences at common law over the estates of insolvent persons, was the means of the introduction of the remedy which the bankrupt-law of Scotland now affords. In this struggle for preference every personal estate, to whomsoever it might belong, native or foreigner, was subjected. Accordingly, the statute 1772 has been found applicable to an English trader, having a quantity of silk in this country; Cole against Flammaire, No. 34. p. 4820. When it was renewed in 1783, it was thought expedient to confine the remedy of sequestrations to merchants; but it does not seem probable that it was intended to limit this privilege to Scotch merchants, when it must be so much for the advantage of all his creditors, that the funds in this country should be divided equally among them. The English statutes of bankruptcy declare, that strangers shall be subject to the sequestration laws; 21 Ja. I. chap. 19. § *ult.* Cowper's Rep. 398—403. It may seem dangerous to sequestrate the estate of a foreigner; but this is easily guarded against, by requiring his own concurrence, as in Ewing's Creditors against Douglas, 6th February 1802, No. 14. *supra*, for by § 17. of statute 1793, it is provided, that no sequestration shall be awarded against any person abroad, having an estate in Scotland, but with his own consent, unless he has resided or had a dwelling-house or house of business there, within a year previous to the application.