

APPENDIX.

PART I.

FOREIGN.

1762, July 2. 1764, December 20, and 1767, January 26.

THOROLD, and Others, *against* FORREST and SINCLAIR.

THIS case, as in the Faculty Collection, is No. 81. p. 753. *voce* ARRESTMENT. It is mentioned again, No. 89. p. 4561. *voce* FOREIGN.

No. 1.

The following procedure not mentioned in the report took place :

A litigation had taken place before the Lord Ordinary, relative to the title of the assignees under the commission of bankruptcy to compare and compete in the action.

The Lord Ordinary sustained their title, and the Lords, 2d July 1762, confirmed his interlocutor. The Court (20 Dec. 1764) found, " That the proceedings under the commission of bankruptcy did not bar the creditors of the bankrupts, whether their debts were contracted in England or Scotland, to affect their debtor's effects situate 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 are made, are preferable to the assignees under the commission of bankruptcy, and in so far refuse the desire of the petition for the trustees, and adhere to their former interlocutor ; but sustain the objections to the arrestments which were used upon the depending processes against Tabor and Co. and likewise to the arrestments which were used upon hornings against Thomson and Tabor, upon bills protested for non-acceptance and for recourse, in respect there were no arrestments previously laid on *jurisdictionis fundanda causa* ; and in so far refuse the desire of the petition, and adhere to their former interlocutor ; and before answer as to the arrestments used in the hands of William Cumming, appoint his oath and account relative thereto to be printed," &c.

The cause having been remitted to the Lord Ordinary, he (22d July 1766) found, " That the arrestments used by Messrs. Hog and Mosman, and Mansfield and Hunter, upon precepts issued from the High Court of Admiralty,

No. 3. “ were not proper arrestments *jurisdictionis fundandæ causa*, in terms of the interlocutor of the Lords, and consequently, are not sufficient to support the subsequent diligence which followed on the dependence before the said Court, and therefore preferred the legal assignees under the commission to the creditors arresters, and decerned.”

This interlocutor was reclaimed against, and the Court (26th January 1767) upon advising petition and answers, adhered.

The copy of the ultimate interlocutor, given in the report, p. 756. is incomplete.—It was as follows :

The Lords found, “ That the assignees under the commission of bankruptcy, have a sufficient title to compare and compete in the action, but that the proceedings under the commission of bankruptcy did not bar the creditors of the bankrupts, whether their debts were contracted in England or Scotland, from affecting their debtor’s effects situate in Scotland, or debts due to them by persons residing in Scotland, by legal diligence; and therefore found that such of the arresters against whose arrestments no objections are made, are preferable to the assignees under the commission of bankruptcy; but sustained the objection made to the arrestments used in the hands of William Cuming, and also those which were used upon the processes depending against Tabor and Co. and also those which were used upon bills protested for non-acceptance, and found the assignees preferable *quoad* these debts, in respect that the same have not been affected by any proper diligence at the instance of the creditors; and remitted to the Lord Ordinary to proceed accordingly.”

* * The case between Read and Strother, referred in the note p. 4561. is No. 4. APPENDIX, PART I. *voce* FORUM COMPETENS.

* * In the case of Pewtress and Roberts, No. 82. p. 756. *voce* ARRESTMENT, and No. 90. p. 4561. *voce* FOREIGN, relative to that of Thorold, the report, as in the Faculty Collection, ought to be corrected as follows :

Thomson and Tabor had not only lodged with Cuming, their agent, bills drawn upon their debtors in the country, but also bills *blank indorsed*. At the date of the interlocutor mentioned in the report, paragraph 3*d*, Sustaining the objection to the arrestments in the hands of Cuming, Cuming had properly speaking no effects in his hands, being possessed only of bills lodged with him as above. The Court found, after a hearing in presence, that the protested draught on Cuming in favour of Pewtress and Roberts, was not equivalent to an assignation of the draughts and bills lodged with him.

When the new arrestments were used in his hands, he had recovered part of the money due to his constitutents.

In the pleading for Pewtress and Roberts, it was maintained, in addition to what is mentioned in the report, that not only the bills payable to Cumming, but those *lodged with him*, were effects in his hands attachable by arrestment,

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.