

ALVA. Many mercantile causes may have come before the Admiral in Clyde, and may have remained unchallenged ; but *this* will not make a jurisdiction in one district which is not in another.

COVINGTON. If the depute of Clyde has such jurisdiction, every other Admiral-depute must have the same. The Judge of the High Court of Admiralty has acquired that right by usage ; but it will not follow that inferior judges have the same right. If a crime is committed, the High-admiral may grant warrant for apprehending the criminal wherever he is : but how shall the depute-admirals exercise a like jurisdiction ? If a man who lives in Fife has committed an offence, can the Admiral of Clyde punish him ? The jurisdiction of the depute-admiral must depend upon residence : How are we to ascertain the limits of that jurisdiction ?

JUSTICE-CLERK. What security has the nation as to the appointment of admiral-deputes ? Mercantile causes extend very wide. Procurators naturally advise their clients to go to the court which is at hand. Both judge and procurator have an interest in this ; and thus the causes of the greatest consequence may, for the conveniency of the procurators, and the emolument of the judge, be tried before one who has no knowledge of law.

On the 15th June 1776, " The Lords sustained the reasons of suspension of incompetency ;" adhering to their interlocutor, 21st December 1775.

Act. Ilay Campbell. *Alt.* G. Wallace.

Reporter, Covington.

No vote.

1776. *January 23 and June 14.* BENJAMIN GLOVER and OTHERS, Assignees under the Commission of Bankruptcy of Bedford and Son, *against* ROBERT VAZIE of Hexham, in Northumberland.

FOREIGN.

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 ?

[*Faculty Collection, VII. 272 ; App. I., Foreign, No. 3.*]

GARDENSTON. The assignees cannot compete here on their letters to the debtors of Bedford and Son. There was no assignation ; at most an intimation only, which by itself is nothing.

MONBODDO. It has been often found that the assignees, under a commission of bankruptcy, may pursue for and make effectual the debts of the bankrupt even in this country.

KAIMES. An assignation by a bankrupt gives a title to pursue for effects out of the country, but it does not give a preferable title. But the question reported, is, "Whether a creditor, drawing in England, may not render his debt effectual elsewhere?" I can discover no reason why he may not.

COVINGTON. I am old enough to remember the first introduction of claims by English assignees, and I have seen what may be called the retrogradation of such claims. The Court has strangely varied; sometimes granting, sometimes denying, and sometimes qualifying the right of the English assignees. It has been said of late, "We do not give an absolute and preferable right to such assignees, but only a title to pursue." I think, and always will think, that such assignees have no right, not even of action out of England, and that, by thus blending the diligence of the two countries, inextricable confusion is introduced.

KAIMES. The assignation under the commission conveys nothing to be sure; but a right of action is a very different thing. Thus, in the common case, I get nothing conveyed to me by an arrestment; but, having arrested, I bring a forthcoming, and desire the judge to make effectual, in equity, that claim which I have by the arrestment.

MONBODDO. If Lord Covington is right, there can be no competition here, and the arrester must be preferred; but, if we go into that opinion, we must overturn many decrees which have been pronounced on the contrary supposition.

JUSTICE-CLERK. I always thought that it was inconsistent with law, that a commission of bankruptcy, issued under the great seal of England, could ever vest any subject out of England; but it is going too far to say that such commission will not give a title to pursue. The late bankrupt law will not vest subjects situated in England, but it will give a right of action in every English court of law; and the judges *there* will surely sustain action. Although the mode of the commission is different in England, and does not require the consent of the bankrupt, yet it will have the effect of giving a ground of action on the commission, which is founded on the implied consent of the bankrupt. I cannot, at present, see why a creditor, who has got a dividend in England, may not seek to have the rest of his debt made effectual in Scotland, seeing that the subjects in Scotland do not vest in the English assignees without diligence.

PRESIDENT. Suppose that, on the late bankrupt statute, a creditor should take a dividend on the trust-right, Could he go to England, and, by diligence, draw payment there?

KAIMES. I think that the trustee on the bankrupt act would be preferable as an assignee. That is not the case of assignees under an English statute of bankruptcy, which is only an assignation as to subjects in England.

HAILES. That the English assignees have a right of action has been frequently found. I took this case to report, supposing *that* to be established in practice; for, if that were not the case, there would be no question to be reported. I thought that Vazie, an Englishman, having claimed on an English debt, and actually drawn a dividend from the legal assignees, he could not come to Scotland and take payment of his debt, to the disappointment of the assignees. That the assignees were not only trustees named for him by the

laws of his country, but trustees whom he himself had acknowledged. If he had first arrested, and then claimed a dividend in England, he would have been excluded, unless he gave up his arrestment. There seems no reason why he should be permitted to make his diligence effectual, merely by the device of drawing a dividend first, and arresting afterwards.

On the 23d January 1776, "The Lords found that Messrs Glover, &c., assignees under the commission of bankruptcy awarded against Bedford and Son, have a right of action entitling them to recover the bankrupt's effects in Scotland, and to compete for the same; and further, found that Robert Vazie of Hexham, an Englishman claiming under an English debt, and having already drawn a dividend of the bankrupt's effects, on account of the said debt under the said commission, is barred from competing with the assignees, or claiming preference on his arrestments produced.

Act. G. Fergusson. *All.* R. Sinclair.

Reporter, Hailes.

Diss. Kaimes, Auchinleck, Alva. *Non liquet,* Justice-Clerk, Elliock, Covington. [The last because, as he said, he thought that legal assignees had no right of action, and therefore he would not vote, although the Court had overruled that preliminary objection.]

1776. June 14.—JUSTICE-CLERK. I should be sorry to see the Court depart from the judgments which they have frequently pronounced. The assignees may claim, and they may compete. To deny them a right of action would be a departure from principles and practice; and it would be the harder, because English creditors take no concern themselves, but leave the management of the bankrupt's estate to the assignees, who are their trustees. Equally clear as to second point.

MONBODDO. If the point were new, I should have doubt; and should rather think that a commission of bankruptcy had no more effect than a commission of lunacy. An English creditor who consented to the commission of bankruptcy, and drew a dividend, cannot resort to the diligence of this country; for *this* would be a counteracting of his own deed.

COVINGTON. I cannot understand how a commission of bankruptcy, which does not vest subjects, can give a right of action as to those subjects; but, if there is a right of action in the assignees, and Vazie has done any thing to bar himself, he cannot now interfere.

GARDENSTON. We are opening a door to hurt the interest of creditors in this country. The commission of bankruptcy does not give any right whatever in this country; it only vests the estate within the territory of England: If so, How can it give a title to pursue in Scotland? I must confess that our decisions have gone so far; and there is no help for that. I must bend to them. But I am much alarmed at the second proposition, that a creditor should be debarred from recovering part of his debt in Scotland, because he has taken what he could in England. We are not to go any farther than the law of our country; and we cannot walk safely in any other track.

KENNET. If the first point were open, there might be difficulty; but it was solemnly fixed, 13 years ago, in the case of *Thomson and Tabor*. As to the

second point, I am against the interlocutor. An English creditor may either claim under the statute, or let it alone; but this only respects English subjects, and it will not hinder him from attaching subjects in Scotland. Perhaps the assignees may repeat from him what he has already recovered in England.

COVINGTON. If the first point is settled, I must be of the opinion of the interlocutor. As to the *second*; if a commission of bankruptcy is equal to an assignation by the bankrupt, every one who accepts such assignation is bound by it, and cannot interfere.

On the 14th June 1776, "The Lords found that the assignees have a right of action;" adhering to their interlocutor, January 1776. But, as to the other point, they ordered memorials.

*Act. G. Ferguson. Alt. R. Sinclair. Rep. Hailes.
Diss. as to the first point, Stonefield, Covington.*

N.B.—No memorials were given in; but the Court, having given judgment in the case *T. and T. Khone against Parish and Schreiber*, adhered to their interlocutor in the case of *Vazie against Glover*.

1776. *February 21 and July 5.* JOHN ROBERTSON *against* JANET ROBERTSON and OTHERS.

PRESCRIPTION.

How far an action, brought by a person in his own right, will interrupt the negative prescription of the same claim, which might have been competent to him in the right of another.

[*Fac. Coll. VII. 237; Dict., Appendix I.—Prescription, No. 2.*]

February 21.—MONBODDO. If it were not for the marriage-contract, 1725, I should have great doubt. That contract was a virtual assignation; and from that time the brother stood in the sister's right. Were it not for that, the right would have remained in Grizel, and would have prescribed.

KAIMES. John Robertson thought that he had right to the 1000 merks, though unjustly: he raised an action within the 40 years. Suppose that his sister had had a right to part of the 1000 merks, as there was but one debt, would not Robertson's action have interrupted prescription as to the whole, just as an adjudication led by a putative heir will accresce to the true heir? The same also is the case as to inhibitions.

GARDENSTON. The discharge, 1725, imported an obligation to grant an assignation and a virtual right.

HAILES. The opinions given seem to affect a necessary, though not favoured part of our law, that of negative prescription. How can the negative prescription, as to Grizel, be interrupted by a claim made by John, which not only