No 44. House of Peers, in that of Arthur *contra* Hastie and Jamieson, 10th April 1770, No 43. p. 14209.

The cause was reported by the Lord Ordinary; when

A majority of the Court were of opinion, that the proper possession of the goods was held, not by the shipmaster or owner, but through them, first by the shipper, and then by the indorsee to the bills of lading, *animi*; delivery of possession being made in an effectual manner, and such alone as the case was capable of; and therefore

"The Lords repelled the defences pleaded for Messrs Dunmore and Company."

Reporter, *Lord Henderland.* Act. *Wight, A. Campbell.* Alt. *Rolland, Abercromby.* Clerk, *Orme.*

S. *Fol. Dic. v.* 4. *p.* 250. *Fac. Col. No* 305. *p.* 470.

SECT. III.

Stoppages *in transitu.*

1788. *December* 4. Allan and Steuart *against* Creditors of Stein.

No 45.

In the case of Allan and Steuart *contra* Creditors of Stein, No 49. p. 4949, it was virtually found, both in the Court of Session and in the House of Lords, that the transmission of bills of loading to the purchaser three weeks before his bankruptoy, did not bar the seller from stopping, *in transitu*, such of the goods as were not landed and delivered.

Fol. Dic. v. 4. *p.* 252.

1789. *July* 23.

John Young *against* The Trustee for James Stein's Creditors.

No 46.
Altho' a bill of lading has been transmitted, it was found the goods might be stopped *in transitu*, when the consignee had become bankrupt.

Sandeman and Graham, merchants in London, were the consignees of James Stein, a Scotch distiller, and as such intrusted with the sale of large quantities of spirits prepared by him for the London market. They had come under acceptances for Stein to a great amount, when he shipped for London, consigned, as was usual, a cargo of aquavitæ, of which he had indorsed and transmitted to them the bill of lading.

The vessel set sale, but was, by contrary winds, obliged to put back to her port. Mean time, Sandeman and Graham became bankrupts, and their estate

was vested in the assignees named under a commission then issued. Stein's bankruptcy likewise immediately followed, when a sequestration of his effects was awarded. No 46.

Young, as attorney of the assignees, appeared before the Admiral-Court, and insisted on the ship still proceeding to London under the consignation, alleging, that by the indorsation of the bill of lading, a *jus quæsitum* had arisen to Sandeman and Graham. This claim being opposed by the Trustee for Stein's creditors, who brought under review the judgment of the Admiral, which was in favour of the assignees; it was, for the latter,

Pleaded; Sandeman and Graham were creditors in relief to Stein. They were therefore entitled to retain for their security all goods of which, as his consignees, they had attained the possession.

Now, when those in question were put on shipboard, the consignees, under the authority of the indorsed bill of lading, acquired the civil possession of them by means of the shipmaster or natural possessor; who, subordinate to them as having the sole right to call him to account, then held the custody to the same effect as if the ship had belonged to themselves, or as if the goods had been locked up in any other repository of theirs, while the key was in the pocket of some third party having their orders. For surely it cannot create any real distinction between that case and the present, that a situation the same in itself, has been here produced *brevi manu*, which there would have resulted from an actual delivery to Sandeman and Graham on the spot where the goods were shipped, followed by the circumstance of the shipping being performed by themselves. Such *brevis manus* tradition is universally understood to be effectual with respect to corn in a public granary, in which case; the buyer having no design of removing the grain, to employ a similar circuit terminating in the point where it began, would be absurd; and in regard to cargoes at sea, a situation in which any other delivery would be impracticable; Postlethwaite's Dict. *voce* BILL of LADING; Buchanan and Cochran *contra* Swan, 13th June 1764, No 42. p. 14208; Judgment of House of Lords, Hastie and Jamieson *contra* Arthur, 10th April 1770, No 43. p. 14209; 2d February 1787, Bogle *contra* Dunmore and Company, No 44. p. 14216.

In the practice of England, it is said, goods may be reclaimed by the seller from a bankrupt-purchaser while *in transitu*; but this supposes, that the former had lain under no previous obligation to give rise to a *jus quæsitum* in the latter.

Answered; It was solely for the behoof of Stein, that either the consignment was made, or the bill of lading indorsed; so that prior to actual sale, this *mandatum gratia mandatarii* was revockable. It did not in the least tend to divest Stein of his ownership. To attribute to the office of a factor such an extensive privilege as has been supposed, would be dangerous; and the idea is unknown in practice, as the opinion of Lord Mansfield, though given in a case of a different nature, plainly implies; Burrow's Reports, vol. 2. p. 941.

No 46.

An indorsation on a bill of lading cannot be more effectual than a power of attorney, which it truly is in an abridged form. The only right it conveys is, that of demanding implement of the shipmaster's obligation; a right which, being accessory to that which the consigner has to the disposal of his goods for his sole benefit, must as such bear the character, without transgressing the limits of the principal. The *jus exigendi* thereby conferred is therefore totally different from the civil possession, which still continues to be held by the consigner; as was lately determined in the case of Allan and Steuart *contra* Creditors of Stein, No 45. p. 14218.

The Lord Ordinary reported the cause, when

The Court "preferred the Trustee on the estate of James Stein to the spirits in question."

A reclaiming petition was presented, followed with answers, and refused.

Reporter, *Lord Dreghorn.* Act. *Rolland, Hope.* Alt. *Maconochie.* Clerk, *Home.*

Fol. Dic. v. 4. p. 252. Fac. Col. No 80. p. 144.

*** A similar judgment was given in the House of Lords in another case relative to the same bankruptcy, viz. Farquhar Kinloch *contra* Craig, May 13. 1790, which made it unnecessary to appeal the case of Young.—In an English case, Liekbarrow *versus* Mason, it was decided in the House of Lords, June 14. 1793, that a bill of lading being indorsed by the vender to the purchaser, and by him to a third party for value, the onerous indorsee was entitled to the benefit thence arising, *i. e.* the cargo, or its price, although the purchaser had become bankrupt, and the vender had transmitted another copy of the bill of lading to his attorney, in order to stop the goods from being delivered, which was intimated to the master when the ship arrived. See Appendix.

1798. *November* 20.

The Viscount of Arbuthnott *against* Alexander Paterson, Trustee for the Creditors of James Bisset and Son.

No 47.
Grain having been sold to a person who became bankrupt before the price was paid, it was found, that in the circumstances of this case, the delivery

On the 2d January 1796, the Viscount of Arbuthnott, by a minute, "sold to James Bisset and Son, of Montrose, 1000 bolls of oatmeal, and 600 bolls of bear," part of his farm-grain, which were "to be delivered at Gourdon, or any other place where the tenants are obliged to deliver the same." The Viscount agreed to give a list of the tenants, "who are to deliver the said meal and bear, with a precept thereon, requiring the tenants to deliver the same to Bisset and Son, in terms of their leases." The purchasers granted bills for the price, payable at Whitsunday following.