

The rule, then, of ascertaining this personal quality by the law of his own country, not only is consistent with the general principles of jurisprudence, but is also highly expedient; for nothing could be more absurd than for a person to be a bastard in one country, and lawful in another, merely by passing a river, or crossing a mountain, the boundary of their respective territories.

If at the time of the marriage the father had no real estate in Scotland, it is admitted that the child would have been a bastard; but if he afterward purchased an estate, or obtained an heritable bond from one of his debtors, or adjudged his estate, would these operations affect the filiation of his children, and make them legitimate in this country? If, again, a real estate in this country devolved to the father, or through him to his next heir *designatio*, but after his death, could the child claim this upon the plea of being legitimate, when he ought to begin with proving that he is so? *Macculloch against Macculloch*, 10th February 1759, No. 102. p. 4391.

The question was reported to the Court by the Lord Ordinary upon informations; upon advising which, and after a hearing in presence,

The Court repelled the reasons of reduction, with one dissentient voice.

Lord Ordinary, *Polkomm*.

Agent, *Arch. Miller, W. S.*

Agent, *Ed. Lothian, W. S.*

For Sheddan, *H. Erskine, Fletcher.*

Alt. Solicitor-General *Blair, Cathcart.*

Clerk, *Ferrier.*

F.

*Fac. Coll. No. 116: p. 259.*

\* \* This case was appealed. The House of Lords (2d March 1808) ORDERED and ADJUDGED, that the appeal be dismissed, and that the interlocutor therein complained of be affirmed.

1805. June 7. BLACK and KNOX *against* ELLIS and SONS.

JAMES GOW, merchant in Arbroath, having become indebted to Ellis and Sons, merchants in London, they obtained a decree against him, and recovered payment (26th August 1802) by a poiding of his effects.

Black and Knox (14th September 1802) also raised an action against Ellis and Sons, and their attorney, in whose name the previous proceedings had taken place, in order to communicate the proportion of the price of the poided effects, in virtue of statute 33d Geo. III. C. 74. § 6. Arrestments on the dependence were used in the hands of the attorney for Ellis and Sons, as well as in the hands of their law-agent, to whom the money had been paid by the messenger.

In this situation, Ellis and Sons

Pleaded: The action is altogether void, because, being foreigners, they have not been regularly cited. No arrestment *jurisdictionis fundandæ causâ* has been

No. 6.

No. 7.

No arrestment *jurisdictionis fundandæ causâ* necessary, where a foreign creditor, and his attorney, having recovered his debt by poiding, is summoned under the bankrupt-act, in order to contribute the statutory proportion of

No. 7.  
the proceeds  
of the poind-  
ed goods.

used. This is the only form by which persons, not subject to a territorial jurisdiction, can be made amenable to it, by fixing, within the territory, funds belonging to the debtor, from which the decree may be made effectual; Ersk. B. 1. Tit. 2. § 19.

Answered: This is not an ordinary action for debt brought against a foreigner. The subject *in medio* is the bankrupt-estate of Gow; the sum recovered by the poinding belongs not to the creditor poinder, but by statute belongs in part to whoever is in a situation to claim it. For this purpose, he is directed to summon the poinder; and a foreigner who resorts to the laws of this country, must submit to the same rules of diligence as a native.

The Lord Ordinary (23d February 1803) repelled the defence as to the competency of the action.

This was affirmed by the Court, (7th June 1805), on advising a petition and answers; and again, (25th June), by refusing a reclaiming petition, without answers.

Lord Ordinary, *Polkemmet.*  
Alt. *Cathcart, Forbes.*

Act. *Gillies.* Agent, *Wm. Baillie, W. S.*  
Agent, *Ar. Dunbar, W. S.* Clerk, *Home.*

F.

*Fac. Coll. No. 212. p. 473.*

\* \* The case of Hog against Hog, 16th June 1795, No. 119. p. 4628. *voce*  
FOREIGN, was affirmed on appeal as to the point there reported.

\* \* The case Strother against Read, 1st July 1803, referred to p. 4561, is  
No. 4. APPENDIX, PART I. *voce* FORUM COMPETENS.