

continues notour bankrupt in the construction of that act, provided he still continues insolvent, or if it is necessary that he also continue under diligence with the other alternatives of the statute? *2dly*, Whether securities granted by such bankrupt for payment of other peoples' debts, as well as for payment of his own debts, are reducible by this act? Upon the first point, the Lords by a great majority, found that the debt and caption being discharged before the transaction quarrelled, it fell not under the act 1696; wherein the President, Arniston, Royston, and Kilkerran were clear of that opinion, which I own I was not. They also found, that the giving security for payment of another person's debts did not fall under the act.

No. 18. 1743, June 17. ROBERT FORREST *against* MARGARET LAING.

A BANKRUPT making over his estate to trustees for his creditors, who sold the estate, and made the creditors, on receiving their proportions, to make over their debts to the purchaser, with absolute warrandice *quoad* the sum received, and from fact and deed *quoad ultra*, but not to affect the debtor's person, or other effects;—the Lords found, that after that assignation, the original creditor had no action against the debtor for the debt.

No. 19. 1746, June 20. MARSHALL *against* YEAMAN and SPENCE.

YEAMAN and Spence, Scotsmen, merchants in London, gave promissory-notes for L.78 to Thorburn, also a Scotsman, but then in London, and which notes were afterwards indorsed to Marshall.—A statute of bankruptcy went out against Yeaman and Spence, wherewith they complied; but neither Thorburn nor Marshall compeared before the Commissioners, nor got any share. Now Marshall sues them, and they plead the statute of bankruptcy, and their having complied with the conditions.—Dun sustained the defence;—and this day we adhered without a vote,—but Tinwald doubted.

No. 20. 1746, June 20. ALEXANDER CHRISTIE *against* JOHN SPENCE.

THIS case came before me, and being upon the same point of law, (as above,) I took it to report, and was allowed to do it when the former question was under deliberation. Straiton, a Scotsman in London, became debtor to Christie in Montrose, merchant, in L.281, as the balance of an account, arising partly from bills drawn by Straiton on Christie, but chiefly from cargoes of linen bought by Christie on commission from London, and sent to Straiton to be disposed of for their joint account, and of which Christie got the prime cost to pay of Straiton's half and his own, a commission of bankruptcy having gone out against Straiton in May 1744. He duly acquainted Christie, and sent him his account-current ascertaining his balance to the end, that he might claim and draw his share, which Christie neglected, but took a decret in absence against Straiton in this Court in July 1744. Straiton complied with the statute, and got the Chancellor's certificate, and began again to trade. Christie arrests here some of his new acquired effects, and pursues forthcoming; to prevent which Straiton drew bills on his debtors, payable to John Spence, but for his own behoof, which Spence owned, and competed on these bills in the forthcoming.

So the question was, Whether notwithstanding Straiton's having complied with the commission of bankruptcy, Christie, a former creditor in Scotland, could attach the goods after acquired? The President thought, that had the debts been contracted in England, though to a Scotsman, that he could not; but thought those debts were contracted in Scotland, and yet, because of the particular notice given, thought that at any rate he could have action no farther than he would have been entitled to, had he accepted of the share with the other creditors; that whether he might have action against Straiton to that extent he was not clear, but inclined to think that he could have no action. Tinwald thought the English statute could have no effect *extra territorium* but *ex comitate*, that it was *in rem scripta*; but that Scots or Dutch creditors were not subject to it; that the private notice was of no force. If foreigners were bound by that law, then such notice was not necessary; and if they were not bound as *extra territorium*, then that private notice could not bind them. I noticed, that as the *cessio bonorum* was to some extent received in all civilized nations, and chiefly in favours of commerce, it would be hard if such was the law of nations, that it was impossible he could have the benefit of it. If the *cessio* was in England, it could not be available in Holland or Scotland. 2^{do}, That these debts were truly contracted in England: The bills became debts the moment they were out of his hands, though Christie became the creditor only when he paid them, and he was bound by the commissions whenever he sent them away, and both behoved to be regulated by the law of the place where they were signed, otherwise London, Paris, and Smyrna, might be the *locus contractus* of one and the same party to different contracts at one and the same time; and whatever might be the law in debts contracted in foreign countries when the party was locally there, yet here the contract is made upon the faith of the law of England. The Lords agreed as to the bills, but not as to the commissions. But Drummore observed, that by the commissions the contract was to be executed in England, the goods to be sold for their joint behoof, and to be accounted for there, which had great weight with the President; and upon the vote, it carried that Christie was barred from recovering his payment out of those effects acquired after the commission of bankruptcy, and therefore to prefer Spence. *Renitent*. Tinwald.—N. B. Strichen did not vote, nor I think Monzie, and Kilkerran did not hear the reasoning, and therefore did not vote.—Nov. 4, Adhered. *Vide* Notes on petition.

No. 21. 1747, Nov 13. OGILVIE *against* CREDITORS of ABERDEEN.

CAPTAIN OGILVIE, as creditor to Mr Aberdeen, arrested in the hands of certain debtors, and pursued forthcoming. Compeared the assignees of the Commissioners of Aberdeen's bankruptcy appointed in England, and claimed to be preferred, because John Aberdeen was residing at London, and the pursuer's debt being contracted in England, the case behoved to be judged according to the law of England, because *mobilia sequuntur personam*; and then the arrestment though prior to the bankruptcy, yet was voided by the subsequent statute. 2^d, The pursuer actually claimed before the Commissioners of bankruptcy. Answered, 1^{mo}, Moveables in Scotland cannot be attached but by diligences issuing out of the Courts of Scotland, and such diligence must have its operation according to the law of Scotland. To the second, That he indeed entered a claim, but the Commissioners