

1743. *February 9.*CREDITORS of AGNES HAMILTON of Rachan *against* HENRY.

No. 17.

THOUGH a person be bankrupt in terms of the act 1696, that is, be not only insolvent but in prison upon a caption, yet if the debt in the caption be afterwards paid, and he liberated; found, that he does not remain notour bankrupt in the sense of that act, though he be still insolvent. *2dly*, Found That one who is notour bankrupt in terms of the act 1696, though he cannot lawfully prefer one of his own creditors to another by making payment or granting security, yet he may pay or secure another person's creditors. (See DICT. No. 173. p. 1092.)

1743. *June 17.* ROBERT FORREST *against* MARGARET LAING.

No. 18.

A BANKRUPT having disposed his estate to trustees for his creditors, who sold it, a creditor, who on getting his dividend from the purchaser, made over his debts with absolute warrandice for the sum received, and only from fact and deed *quoad ultra*, but not to affect the debtor's person or other effects. That creditor has no action against the bankrupt for the residue of his debt.

1746. *June 20.* MARSHALL *against* YEAMAN and SPENCE.

No. 19.

THE statute of bankruptcy having gone out against two Scots merchants, Yeaman and Spence, wherewith they complied and got the Chancellor's certificate; and being now sued upon a note of L.78 granted before the commission of bankruptcy to a Scotsman, Thorburn, in London, and now indorsed to Thomas Marshall, neither of whom compeared before the Commissioners, nor got any share of the bankrupt's effects; yet the defence on their statute of bankruptcy was sustained, and the defenders assoilzied. See FOREIGN. (See DICT. No. 95. p. 4568).

Effect of the Chancellor's certificate.

1746. *June 20.*ALEXANDER CHRISTIE. *against* JOHN SPENCE, Trustee for SAMUEL STRAITON.

No. 20.

STRAITON in London was in a sort of company trade with Christie in Montrose, who upon commission was wont to send him linen to be sold at London for their joint account; and Straiton was in use to draw bills on

Same subject.

- No. 20. Christie, and thereby Straiton became his debtor in L.281. In May 1744, he broke, and a commission of bankruptcy went out against him, whereof he acquainted Christie, and sent him his account, that he might draw his share with the other creditors; which Christie neglected; but in July 1744 took a decret in absence here against Straiton. He again complied with the statute, and got the Chancellor's certificate, and began again to trade with people in this country. Thereafter Christie arrested in the hands of Straiton's debtors; to prevent which, Straiton drew bills on them to John Spence, in trust for his own use. The competition came before me, and I this day reported the question, whether Christie was barred by the statute of bankruptcy from attaching Straiton's effects acquired since the bankruptcy. The difference betwixt this and the former (No. 19.) being, that there the debt, the promissory note, was contracted without doubt in England, whereas the debts in this case were contracted in the above manner. However, the Lords in this case also found that Christie was barred. See FOREIGN. (See DICT. No. 96. p. 4569.)

1747. November 13.

CAPTAIN THOMAS OGILVIE *against* CREDITORS of JOHN ABERDEEN.

No. 21.
Competition between an arrester and the assignees of a commission of bankruptcy in England.

IN a process of forthcoming against the debtors of John Aberdeen, merchant in London, who broke there, compeared the assignees of the commission of bankruptcy in England, and craved to be preferred; in respect the common debtor resided in England, and broke there, and as *mobilis sequuntur personam*, the preference must be judge dby the law of England, by which all arrestments were voided by the commission of bankruptcy; *2do*, because the pursuer, Captain Ogilvie, had actually entered his claim before these Commissioners. But we thought that moveables in Scotland could only be attached by diligences issuing out of the Courts in Scotland, and therefore the preference of them could be judged only according to the law of Scotland; and we had no regard to the second, in respect of the answer, That the Commissioners refused to admit his claim, or to prove his debt, because he had arrested in Scotland. Therefore we preferred the pursuer's arrestment. *Me referente* for advice. See FOREIGN.

1747. December 5, 8.

THOMAS MORISON *against* STRICHEN.

No. 22.
Effect of the Chancellor's certificate.

THOMAS GORDON, merchant in Aberdeen, in January and February 1744, remitted to Morison, merchant in London, a bill and a parcel of