Cranston proceeded on a wrong supposition that the creditors had consented This was a mistake, for the creditors lay by till Lord Cranston's death. Before that time the bargain was uncertain, but not afterwards.

MONBODDO. There was no donation here by Lady Cranston to her husband: it was an absolute bargain proceeding on an offer, only resolvable upon the creditors not agreeing. If this was a donation, it was a donation to third parties, and it cannot be recalled, although the husband should get a consequential benefit.

KENNET. The deed was put on record, and the creditors did not intimate their purpose to recede.

JUSTICE-CLERK and ALVA doubted, in consequence of Lord Covington's argument.

PRESIDENT. Here is a fair contract for the benefit of Lady Cranston's *first* husband, which she calls in question after having gotten a *second*. Nothing was done by Lady Cranston to undo the proposal: it was put on record. The creditors must have been allowed time to give a special consent. There was no harm done to Lady Cranston, and there is no reason that she should be suffered to resile.

On the 2d August 1776, "The Lords found that the deed of renunciation by Lady Cranston is binding upon her and her husband for his interest, and that she is bound to implement it;" adhering to their interlocutor of 22d February 1776.

*Act.* R. M'Queen. *Alt.* J. M'Laurin, D. Rae.

*Reporter*, Ankerville.

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1776. *February* 21 and *August* 7. JOHN PARISH and J. H. SCHREIBER *against* JACOB and JOHN KHONS, &c.

FOREIGN.

**Creditors of a bankrupt acceded to a trust in favour of the whole creditors. The trustee found preferable to such acceding creditor using diligence even as to effects situate in a foreign country.**

[*Faculty Collection, VII.* 271; *App. I., Foreign, No. 2.*]

KAIMES. The pursuers appeared, took their votes, and named trustees: does not *that* bind them down by their own consent? Still they may assert that the translation is not right, or they may deny that they concurred; but they do neither.

COVINGTON. The old question still remains, Whether the agreement in Germany can go further than the subjects in Germany?

PRESIDENT. I do not say that it does; but I bind the pursuers by their own consent, and I bar them *personali exceptione.*

GARDENSTON. I think that the creditors have made an agreement for an equal distribution by the laws of their own country, from which they cannot depart.

JUSTICE-CLERK. It appears that at Bremen creditors meet and choose their own sequesters. This has been done here, and it would be strange if they were afterwards to be allowed separately to attach the goods of their debtor in another country. This is *mala fides;* and, were it authorised, it would be an encouragement to enter into fraudulent devices, to disappoint the law of their own country.

On the 21st February 1776, "the Lords, in respect that the facts in the certificates are not denied, but, on the contrary, it is admitted that the pursuers gave their vote for the trustees, preferred the trustees;" adhering to Lord Monboddo's interlocutor.

*Act.* A. Wight. *Alt.* W. Craig.

*August* 7.—KAIMES. Trustees of foreigners have *jus actionis* in this country from equity. That is the very foundation of an arrestment *jurisdictionis fundandæ gratia.* Parish and Schreiber have appeared, and sought a dividend. *Query.* Does that bar diligence in this country? My difficulty is, Whether will the right of the trustees go farther than the subjects under the jurisdiction of their country? It does not follow, because a creditor is willing to take his share of the German funds, that he must be hindered from laying hold of the Scots funds; but I think that there is an equitable principle in not allowing a preference on the arrestment, which is founded on the analogy of the late bankrupt law.

COVINGTON. I greatly disapproved of the judgment which gave foreign trustees a right of action. But, holding that judgment to be law, I hesitate not in giving my opinion that Parish, having acceded to the trust, cannot compete with the trustees.

MONBODDO. The first question is a point of fact. The certificates clearly prove that the creditors acceded to the trust-right by voting, and that the trust-right comprehends the whole estates of the debtor. My only difficulty was *there;* but *that* is now established by evidence. It is said that although this was a good personal exception, yet that the trustees had no right to plead it; but the decisions of this Court put an end to that objection.

GARDENSTON. Agreed in opinion with Lord Covington.

[This indeed seemed to be the opinion of Mr M'Queen, who pleaded for Parish.]

JUSTICE-CLERK. It would be attended with very singular consequences if the assignees of a foreign bankrupt were not allowed to compete, and the consequences would be as singular if it was the notion of the common law of Bremen that the effect of a *cessio bonorum* was limited to that little territory. Hence a bankrupt must first of all give up his whole books and papers, and then the commissioners must set aside all the vouchers of debts *extra territorium,* as matters of which they could take no charge. The wisdom of nations could never allow of this. It has been found that assignees, or commissioners, have a right to pursue here: it follows of course that a person who is a party to the

act of bankruptcy cannot compete with the commissioners. This would be setting himself against his own trustee.

KENNET. I had some difficulty formerly, but am now satisfied of the justice of the interlocutor. In the case of *Tabor*, it was thought that the subject did not vest in the assignees, but that they had an assignation to a right of action. The creditors here had no reason to imagine that the persons who had concurred in the trust, would have used separate diligence.

ALVA. Greater effects have been given to *comitas* in some cases than we are called to give *here*. The question here is upon strict law, founded on a *personalis exceptio*.

On the 7th August 1776, "the Lords preferred the trustees;" adhering to their own interlocutor, and to that of Lord Monboddo.

*Act.* W. S. Cathcart, H. Dundas. *Alt.* H. Erskine, R. M'Queen.

Hearing in presence.

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1776. *August* 8. ROBERT, JOHN, and DAVID SCOTLANDS *against* MR JAMES THOMSON.

## DELINQUENCY.

**Limits of liberty of the pulpit with regard to censure.**

[*Faculty Collection, VII.* 277; *Dict., App.* 1, *Delinquency, No.* 3.]

[Little was said in this case which had not been already said.]

JUSTICE-CLERK. We live in an age which knows *nec finem nec modum injuriarum;* but the pulpit has in general remained chaste. If, on any account, a minister of the gospel should think himself entitled to follow out his private resentments in the pulpit, the consequences would be dreadful.

PRESIDENT. I was not present when the former decision was pronounced. I do not choose to inquire whether the church judicatories have acted right or not in taking no notice of Mr Thomson's conduct: *that* is no concern of mine. I think that Mr Thomson was very much to blame, and I would not have the audience imagine, though I seldom address myself to the audience, that I do in any particular justify his conduct; but there is much here to alleviate. If the pulpit is to be kept chaste, so also ought the press. Both were in the wrong. I would send both out of Court without expenses.

MONBODDO. The tendency of the conduct of this minister is to make a bear-garden of the house of God.

KAIMES. No provocation can justify the minister for railing in the pulpit; but the damages ought to be restricted as to Robert Scotland, or rather he should have none at all.