

1800. *November 25.*

The EXECUTORS of THOMAS WHITE, against WILLIAM BUTTER.

WILLIAM BUTTER executed a horning against John Morison on 7th March 1795. On the 15th May, Morison retired to the Abbey; and on the 20th, Butter recovered his debt by a poinding.

Thomas White, also a creditor of Morison, gave him a charge of horning, on the 28th May, and conceiving Morison to have been rendered bankrupt by retiring to the Abbey, brought an action against Butter, concluding, that he should communicate to him a proportional share of the sum which he had recovered in virtue of his poinding, in terms of the act 33d Geo. III. cap. 74. § 6. which provides, "That every other creditor of the bankrupt having li-
 " quidated grounds of debt, or decrees for payment, and summoning such
 " poinder, before the said four months are elapsed, shall be entitled to a pro-
 " portional share of the price of the goods so poinded, effeiring to his debt,
 " deducting always the expense of such poinding, together with 10 *per cent.*
 " more on the said price or appraised value, which the poinder shall retain to
 " account of his debt, in preference to the other creditors."

In defence, Butter contended, That as no caption had been used against Morison, he was not rendered bankrupt by retiring to the Abbey.

Answered: It is true, that, in order to create notour bankruptcy, the act 1696, cap. 5. requires, that the debtor, besides retiring to the Abbey, should be under diligence both by horning and caption. But the criterions of bankruptcy are extended, by the 33d Geo. III. cap. 74. § 2. which declares, "That
 " in all actions and questions arising upon the construction and effect of an
 " act of the Parliament of Scotland made in the year 1696, C. 5. entitled, An
 " act for declaring notour bankrupts, when the debtor is out of Scotland, or
 " *not liable to be imprisoned by reason of privilege or personal protection*, a charge
 " of horning executed against him, together with either an arrestment of any
 " of his effects not loosed or discharged within fifteen days, or a poinding
 " executed of any of his moveables, or a decree of adjudication of any part of
 " his estate for payment or security of debt, shall, when joined with insolvency,
 " be sufficient proof of notour bankruptcy; and from and after the last step
 " of such diligence, the said debtor, if insolvent, shall be holden and deemed
 " a notour bankrupt." Now Morison's retiring to the Abbey was "a personal
 protection" in the strictest sense of that term; and, although it were not, yet,
 as being equivalent to a personal protection in its operation, it must have the
 same effect in rendering a caption unnecessary, as all statutes whose object is
 to effect an equal distribution of a bankrupt's effects, receive a liberal interpre-
 tation; 18th February 1755, Creditors of Woodstone against Scott, No. 178.
 p. 1102; 5th July 1774, Fraser against Monro, No. 183. p. 1109; 14th No-
 vember 1764, Mudie against Dickson, No. 152. p. 1217; 4th July 1775, Car-

No. 12.

33d Geo.
 III. C. 74.
 —A debtor
 by retiring to
 the Abbey
 after receiving
 a charge of
 horning, be-
 comes notour
 bankrupt, al-
 though no
 caption
 should be
 issued against
 him.

No. 12. ron Company against Berry, No. 184. p. 1110; 25th June 1782, Ross against Chalmers, No. 185. p. 1111; 4th July 1783, Young against Grieve, No. 186. p. 1112; 1st March 1791, Creditors of Mackellar against Macmath, No. 190. p. 1114;

Replied: The 33d Geo. III. C. 74. being a correctory statute, must be strictly interpreted; Bankton, B. 1. Tit. I. § 62.; Ersk. B. 4. Tit. I. § 43.; 17th November 1785, Maxwell against Gib, No. 188. p. 1113; 14th January 1789, Richmond against Dalrymple, No. 189. p. 1113. Now, a "personal protection" is the act of a court, and is essentially different from taking refuge in the sanctuary, which is a voluntary act on the part of the debtor. What indeed demonstrates that the Legislature did not mean to include the latter under the general words of "privilege" or, "personal protection," is, that in the 13th clause of the same statute, where the cases in which sequestration may be applied for, are enumerated, "retiring to the Abbey," and the not being "liable to be imprisoned by reason of privilege or personal protection," are contradistinguished.

The Sheriff, before answer, "ordained Thomas White to produce evidence that Morison, the common debtor, was under the diligence of his creditors, "by horning and *caption*, and retired to the sanctuary within sixty days of "William Butter's poiding."

White having died, his executors brought this interlocutor under review by advocacy, in which the Lord Ordinary at first remitted *simpliciter* to the Sheriff; but afterward reported the cause on Informations.

The Court (22d May 1800) "repelled the reasons of advocacy." But, on advising a reclaiming petition, with answers, they, by a considerable majority, and on the grounds pleaded by the pursuer, decerned in terms of the conclusions of Thomas White's libel.

Lord Ordinary, *Cullen*.
Clerk, *Pringle*.

Act. *G. MacLaurin*,

Alt. *Connell, H. T. Campbell*.

R. D.

Fac, Coll. No. 197. p. 454.

1801. *November 24.*

CAMPBELL and Others, posterior Adjudgers, *against* The COMMON AGENT for the Postponed Creditors in the Ranking of the Creditors of CHARLES MACLEAN of Kinlochaline.

No. 13.
Construction of the clause in the Bankrupt act which relates to conjoining adjudications.

KINLOCHALINE'S affairs having become embarrassed, his creditors proceeded to attach his estate. An adjudication was led at the instance of George Andrew, writer in Edinburgh, in which intimation was, 11th June 1795, given to the other creditors to be conjoined. Decree of adjudication was, 15th December, pronounced in favour of Mr. Andrew, and twelve other creditors were conjoined