1804. *July* 10. MACMINN, Petitioner.

No. 22.

The whole sum offered by the bankrupt as a composition, and accepted by his creditors, must be with caution; otherwise the Court cannot approve of it.

THOMAS MACMINN having become bankrupt, the usual steps in such cases were taken. Soon after his examination, he offered to his creditors a composition of five shillings in the pound, for four of which he offered caution, and his own bill for the remaining one shilling.

The meeting were "unanimously of opinion, that the offer of composition "and caution made by the bankrupt ought to be accepted, as being for the in-"terest of all the creditors."

Macminn, accordingly, and his trustee, with concurrence of the whole creditors who had produced grounds of debt and oaths of verity, made an application to the Court to have this approved of, and to declare the sequestration at an end.

But as caution had not been offered for the whole composition, the Court (June 2, 1804) thought that this case was not authorised by the bankrupt act, and that they could not therefore interpone their authority.

The petitioner reclaimed, and

Pleaded: All the proceedings under the bankrupt act being intended to deprive the debtor of the power of management of effects now belonging to his creditors, are declared to be for the benefit of all the creditors. But though they are intended for the benefit of the whole, every individual creditor is not bound to take a share in the management: This, in most instances, would be impracticable, and in many would be unnecessary. The act, therefore, vests the management either in a majority or in a certain number of creditors who attend; and where all have the same interest, there is little fear of the rights of those who are absent being compromised. With regard to the offer of composition, the act provides (§ 48.) that if at the meeting so "appointed, it shall "be the opinion of nine-tenths of the creditors there assembled, both in num-"ber and value, that the offer should be accepted, a report of the proceedings "relative thereto shall be forthwith made up by the trustee, and transmitted to "the clerk of the sequestration in the Court of Session, for the approbation of "the Court; and if the Court, upon hearing any objections that may be stated "by opposing creditors, shall find the proposition reasonable," &c. Against this approbation no opposition has been made on the part of any of the creditors; but the Court is there called upon to consider the reasonableness of the proposition, only in the case of objections being offered by opposing creditors.

Had the composition offered been only the 4s. in the pound, not a doubt could have existed, that, if this had been accepted by nine-tenths of the creditors, the approbation of the Court must have followed of course. How can this be prevented by the bankrupt offering, and his creditors accepting, the promise of payment of something in addition to the composition?

No. 22.

The Court adhered, (26th June 1804), without prejudice to the petitioner to reclaim if he shall be so advised.

And, upon a reclaiming petition, again adhered, (July 10.)

The Court was much divided; but it occurred to the majority, that this composition clause was liable to be abused, and ought to be strictly construed; that the acceptance of the bankrupt's own obligation for a *part* of what he owed was contrary to the nature of the business, and not founded in the meaning of the act, as he ought either to remain bound in whole, or be discharged altogether; and that the requisite of caution would, in a great measure, be rendered nugatory, if any other plan were to be adopted.

For Petitioner, *W. Erskine.* Agent, *R. Ayton, W. S.* Clerk, *Ferrier.*

F. *Fac. Coll. No.* 175. *p.* 395.

1805. *June* 22. MACKELLAR *against* TEMPLETON.

No. 23.
The trustee upon the sequestrated estate of a creditor, may be appointed one of the commissioners upon the bankrupt estate of the debtor.

A petition and complaint was presented in the name of Duncan Mackellar, Merchant in Glasgow, a creditor of Andrew Blackwood and Company, narrating, that at a meeting of the creditors of that company, Andrew Templeton was elected one of the commissioners directed by the statute, for the purpose of auditing the trustee's accounts, and giving him advice in the management of the subject; that Templeton was not a creditor but merely a trustee on the sequestrated estate of Allan and Sons, who had been creditors of Blackwood and Company; that the statute directed, that the majority in value of the creditors present, shall name any three of the creditors as commissioners; that Templeton not being a creditor, and merely holding a situation of which he might be deprived at any time, was not eligible to the office; that the votes given for him were ineffectual; and that the petitioner having the next number of votes, ought to have been named commissioner.

It was answered: That, by 33d Geo. III. cap. 74. § 20. it is provided, that at all meetings of creditors, "it shall be lawful for agents or attornies, having "commissions, either general or special, from any of the creditors, to appear "and vote in all matters wherein the constituents themselves, if present, "might have voted." Accordingly, in all procedure under the statute, no distinction is made between persons who stand vested with debts in their own person, and those who hold debts by commission from others; that there is no reason why the office of commissioner should be made an exception; that if this complaint were sustained, and a trustee held ineligible to the office, since a bankrupt creditor was himself divested of his estate, it might often happen, that the person who had the deepest interest in the disposal of a bankrupt's fund would be wholly excluded from any control over the management of the trustee; and that, at all events, even if the objection were to be sustained, the Court