

No. 25. " sale of the wheat was otherwise conditioned than as a ready-money transaction, in the common acceptation among merchants of that term, or that payment was otherwise made than usually takes place in such transactions, which are esteemed sales for ready money, though actual delivery of the cash, or a negotiable note, be a short time subsequent to the delivery of the goods sold, or that payment was not *bonâ fide* made and received; sustains the defences, assolvies the defenders, and decerns, but finds no expenses due."

To this judgment the Court adhered, by refusing a petition without answers.

Lord Ordinary, *Meadowbank.*

Agents, *R. and N. Hill, W. S.*

For Petitioner, *D. Douglas.*

Clerk, *Home.*

F.

Fac. Coll. No. 240. p. 540.

1807. March 4. **MAITLAND against HOFFMAN.**

No. 26. A commission of bankruptcy issued in America preferable to an arrestment used in this country subsequent to its date, though prior to the date of the assignment.

WILLIAM MAITLAND became a creditor of James Maitland, merchant in New-York, in the sum of 1140 dollars, with interest from 16th December 1798, conform to a bond and obligation executed in his favour on 30th December 1798. James had property to a considerable amount in this country; and in order to recover payment, William raised an action before this Court, and used arrestments (24th February 1802) on the dependence, in the hands of one of James's debtors. Of this debt he (23d June) obtained decree, and then raised a process of forthcoming against the common debtor.

James's affairs in America having become deranged, a commission of bankruptcy was issued against him (2d February 1802.) On the 5th, he was declared a bankrupt; and on the 2d March, an assignment under the commission of bankruptcy was executed in favour of Martin Hoffman, who claimed right to all James's effects, in virtue of this title.

In consequence of this competition a multiplepounding was raised, in which (29th November 1803) the Lord Ordinary preferred " Martin Hoffman assignee to the effects and estate of James Maitland, *primo loco*, upon the fund *in medio*."

William Maitland reclaimed, and

Pleaded: Whatever judicial powers of management may be committed to persons acting under a commission of bankruptcy, the debtor himself is held to be in no respect denuded of his property, by the issuing of a commission to ascertain his bankruptcy, nor previous to the deed of assignment being executed. All that precedes the completion of this deed, is a mere *lien* imposed by law on whatever property of the debtor may be within the jurisdiction of the court from which the commission is issued; Jacob's Law Dictionary, *voce* BANKRUPT; Blackstone's Commentary, B. 2. C. 31. § 4. An assignment which divests the debtor of his whole property, ought to have effect given to it in every

country, so far as regards moveables, which are supposed to have no *sinus*, but follow the person of the proprietor: *Strother*, 1st July 1803, APPENDIX, PART II. *voce FOREIGN*. But although the issuing of a commission may impose a lien upon property within the jurisdiction where it is issued, it cannot be extended to impose a lien upon property not within its jurisdiction, the distribution of which must be regulated according to the legal diligence which has attached it previous to the divestment of the debtor by the assignment.

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Answered: An assignee under the commission of bankruptcy, must be preferable to an arrester using his diligence subsequent to the date of issuing the commission; for the assignment, whatever be its date, operates *retro*, and vests the assignee with all the effects of the bankrupt from the date of the commission; Blackstone, B. 2. C. 31. § 4. The bankrupt is completely divested by the commission; so much so, that it is the commissioner, and not the bankrupt, who grants the assignment. In the case of bankruptcy, as in the case of death, the law of the domicile must regulate the distribution of the effects belonging to the bankrupt; and a commission of bankruptcy awarded in England or America must have the same effect in regard to moveables situated in Scotland, that that it has in regard to moveables situated in England or America; and as in both these countries it is undeniable, that from the date of the commission, the whole property of the bankrupt is legally vested in the assignees, the competing diligence used subsequently cannot interfere with this transfer. The regulations of every civilized country, in which the bankrupt-law is reduced to a system, are to be received in this country, and regulate the distribution of moveable effects belonging to a foreign debtor.

The Court adhered.

Upon the same day, the Court decided a similar question, *Morisons* against *Isaac Watt*, which was the case of an English commission of bankruptcy, which was held to exclude an arrestment used in the country subsequent to its date, but prior to the date of the assignment.

Lord Ordinary, *Cullen*.
Alt. *Gillies*.

Act. *Borwell*.
Agent, *J. Taylor*, W. S.

Agent, *R. Rankine*.

F.

Fac. Coll. No. 276. p. 622.

1808. May 17.

JAMES EWING, Trustee on the Sequestrated Estate of MACALLISTER and BRYSON, against WILLIAM JAMESON.

WILLIAM MACALLISTER, merchant in Glasgow, on the 17th June 1801, granted a disposition of a dwelling-house in Glasgow to William Jameson, who took infestment thereon on the 19th of that month.

William Macallister's estate was sequestrated soon after; and James Ewing was appointed trustee upon it. He brought an action for reducing the disposition to William Jameson under the act 1696, ch. 5. on the grounds,

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The circumstances that a caption was raised against a debtor, and that a messenger with that caption.