

1777. *January 29.* DOUGLAS, HERON, and COMPANY *against* CHARLTON PALMER.

AN arrestment on a dependance and on a decret or liquid debt are equally good, provided decret in the dependance is obtained liquidating the debt before determining in the competition; and it is the same, where, in the constitution, defences are reserved *contra executionem*: this reservation keeps the debt illiquid. So the Lords thought in this case; and therefore, though they preferred the parties on the arrestments in Allan's hands *pari passu, et pro rata* of the debt due to them, yet they excepted that part of the debt due to Palmer which at the time of constitution was illiquid, and that, on that account, objections were reserved *contra executionem*. But this day, 19th February 1777, on a reclaiming petition from Palmer, explaining this matter, and, in effect, insisting that his debt was liquid, notwithstanding the reservation; they remitted to the Ordinary to hear parties, and to do as he should see just.

1777. *December 8.* GIBSON and BALFOUR *against* GEORGE GOLDIE.

IN a dispute betwixt Messrs Gibson and Balfour and George Goldie, as creditors-arresters of James Scott's share in the sugar-house;—two points occurred, *viz.* A dispute of preference on the time; Mr Goldie's arrestment being laid on betwixt the hours of four and six afternoon, and Gibson's and Balfour's betwixt the hours of six and nine at night. Another objection occurred to Gibson and Balfour's, *viz.* That it was only in the hands of Francis Kemptie, as clerk to the company. See Erskine, p. 512, and *Cameron against Boswell*, there cited. Lord Auchinleck, Ordinary, having preferred Goldie,—Gibson and Balfour reclaimed, December 1777. The Lords remitted the petition to the Ordinary to hear further: they were not satisfied with the ground of Goldie's debt, which was a decret in absence before the Judge-Admiral, on an unattested account of linens; and they hesitated about Gibson and Balfour's arrestment, as in the hands of the clerk only.

BANK NOTES.

BANK Notes are considered as money, and treated accordingly. See the case of *Miller against Rae*, in Burrow's Reports, Vol. I. p. 452; see also Rem. Dec. No. 105, *Mr Hew Crawford against Royal Bank*.

The point occurred, 2d March 1756, *Duke of Gordon* against *M'Pherson*, in the first Faculty Collection, with regard to the redemption of a wadset, by consignment of Bank of Scotland notes; and it was again stirred, 17th June 1761, in the case between the *Duke of Gordon* and *Gordon of Cockellarachy*, observed in third Faculty Collection, No. though not noticed in that Collection,—“Whether a wadsetter was obliged to receive his payment of the wadset sum from the reverser, in the notes of one or other the Royal Bank or Bank of Scotland? and whether payment of a sum in bank notes can be obtruded upon the creditor whether he will or not?” There was a conclusion to this purpose, in the declarator of redemption raised by the pursuer,—but it was treated as peevish, and the wadsetter declared he was not capable of such chicanery, that is, of refusing bank notes. So, no explicit interlocutor was given upon it; but the lands were found to be redeemable, &c.

In another case, between Mr Burn of Kinloch and Mr Barclay of Pittacheys, the same doctrine was disputed, as to Douglas and Heron notes. In this case, it was a purchase in trust by Mr Barclay for Mr Bruce, under back-bond, to denude to Bruce on payment of a certain sum. The informations are dated 25th April 1771.

The point again occurred, 15th January 1778, adhered to 5th March 1778, in the famous case of succession between Elcherson and Davidson, concerning the effects of Murray, a supercargo, dying at Hamburg, in whose chest a sum of money in bank notes was found. The Lords did not consider them as *nomina*, but as money, and regulated the succession accordingly. They divided upon this point, but the above was the opinion of the majority; and in particular, Lord Braxfield was of opinion, that all bank notes payable to bearer, and passing in currency from hand to hand, as money, were money to every effect and purpose; whether of the public or private banks.

In this case, it was not certain whether the bank notes were of these banks or of the Aberdeen bank.

It has been objected in trials of forgery of bank notes, that they are not obligatory, not having the solemnities of the Act 1681; see *British Linen Company* against *Baillie*,—particularly information for *Baillie*, dated 4th February 1765.

BANKRUPT.

1774. August . CREDITORS OF FENWICK STOWE *against* THISTLE BANK.

FENWICK Stowe, merchant in Berwick, being employed by the Thistle Bank