

rity and jurisdiction of this Court in a high degree, refused him the benefit of the *cessio*, and found him not entitled thereto.

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1772. HAMILTON, M'ALISTER, and COMPANY *against* WILLIAM BORTHWICK.

HAMILTON, M'Alister, and Company, merchants in Edinburgh, insisted in an action against William Borthwick, for payment of an account of cloth furnished to him by them. Borthwick denied furnishing, and further pleaded, in defence, a posterior decret of *cessio bonorum*, in which they had been called. The company obtained decret; which Borthwick suspended. The suspension came before Lord Coalston. His Lordship "found the letters orderly proceeded, and decerned; reserving to the suspender all defences competent to him, on his decret of *cessio bonorum*, if the charges shall hereafter proceed to execution against his person; and reserving to the chargers to show cause why the said decret should not be effectual against them."

The chargers sought expenses; which the Ordinary refused: against which they reclaimed to the Lords. The Lords refused the bill; at the same time, in their arguing, approving of the interlocutor of the Ordinary *in causa*.

From this decision it would seem that a decret of *cessio* is simply a guard against personal execution, but no bar to a creditor's affecting or obtaining decret to affect the after *acquisita* of the debtor who had obtained it.

The point again occurred, and was reported by Lord Kennet, 11th July 1778, when the Lords gave the same opinion, *viz.* That a *cessio* saved only from personal diligence; at the same time, they thought, that if, in a *cessio*, a debtor had a *beneficium competentiæ*, though the extent is not well determined, he would have the same as to after *acquisita*; but then that ought to be no stop to the diligence of a creditor; leaving the debtor, when the case happened, to make it out as he best could,—*Donaldson against Reid*. They did not determine positively as to the *beneficium competentiæ*.

This point again occurred in the case:—

1775. *February* . JEAN THOMSON *against* ANDREW CALENDAR.

In this case, Calendar defended himself before the Sheriff of Edinburgh, against an action brought by Thomson on a decret of *cessio*, in which her author had been called. The Sheriff pronounced this interlocutor, 24th March 1773:—"In respect of the decret of *cessio*, which is of a date posterior to the bill libelled on, and that the drawer of the bill was summoned to the action on which it proceeded, and also, that it is not alleged that the defender's circumstances are meliorated; sustains the defences, assoilyies the defender, but finds no expenses due."

Pleaded in an advocacion, That this was a mistake in fact, the pursuer's averment being, that Calendar's circumstances were greatly meliorated. Lord Stonefield however refused the bill; but, in a reclaiming petition, the Lords were of opinion that the cause should be remitted to the Sheriff, with an instruction to

inquire into Calendar's circumstances, and then to do as he should see just. But, in the *first* place, They remitted it to Lord Stonefield *simpliciter*, leaving him to make the remit to the Sheriff in the above terms.

In the case above-mentioned, 11th July 1778, Donaldson against Reid, Lord Kennet's interlocutor was,—Suspends the letters *quoad* personal diligence against the suspender; but, in other respects, finds the letters orderly proceeded. This interlocutor, on the report, the Lords adopted.

1776. December 3.

A PERSON who had obtained a *cessio*, presented a bill of suspension on juratory caution against a charge given him for payment, by one of his creditors called in the *cessio*. The charger answered, that he meant not to attack his person, but his effects acquired since obtaining the *cessio*, particularly,—for he was a horse hirer,—some horses which he had acquired since decret in the *cessio*. It was replied, that it was by these horses he gained a sober aliment; and that a debtor was, in every event, entitled to a *beneficium competentiæ*. The Lords past the bill on juratory caution,\* in order that the point might be tried as to the after acquisitions: It being understood, that, in consequence of passing the bill, the debtor was to give a disposition *omnium bonorum*, as in juratory caution, in common form.

\* Same in another case reported by Lord Monboddo, 21st November 1777. Same in another case reported by Lord Monboddo, 25th June 1778.

1776. December 3. ISOBEL ROWLEY *against* HER CREDITORS.

In a *cessio bonorum*, law makes no distinction as to the dyvor's habit, betwixt a male and female pursuer; at the same time, it is apparent that the habit prescribed for dyvors, by the Acts of Sederunt, was meant only for males. The procedure in both cases is the same. The above was not mentioned judicially, but occurred in private.

1778. March 4. SIR JOHN DOUGLAS *against* HIS CREDITORS.

SIR John Douglas of Kilhead pursuing a *cessio bonorum* against his Creditors; when it came to be insisted in, there was no appearance for the creditors, and no opposition. Sir John was willing to dispoene every thing, a bond of annuity which he had from the Duke of Queensberry and his half pay as a cornet not excepted: the first was dispoened accordingly,—but, as there was no appearance for the creditors insisting for the last, the Lords excepted it from the disposition, (4th March 1778.)