

1788. January 17. BERTRAM and GARDINER *against* HUGH FINLAY.

BANKRUPT.

23d Geo. III. c. 18.—This Act provides, that a party desirous to be conjoined in a pointing, must *summon* the pointer within a limited time. The appearing in an action, and producing an interest, found equivalent.

[*Fac. Coll. X. 27; Dict. 1250.*]

JUSTICE-CLERK. It often happens in multiplepointings that all parties having interest are not called, but that such persons appear, claim, and are preferred. In inferior courts, one arrestee pursues a forthcoming, and yet other creditors appear and compete: a summons, required by the statute, is still less than a judicial demand, which has been made here. After having made a judicial demand, a summons would have been superfluous.

ESK GROVE. The first clause in the statute, with regard to arrestments, allows the production of an interest in the forthcoming. In a pointing there is no occasion for a forthcoming; it is required that the debtor be called: creditors may produce their interests,—that is equivalent to a summons. In the Act 1662 the word *cite* is used; and yet it has been found that a creditor, named in the testament, may be received within six months, although never cited.

On the 17th January 1788, “The Lords repelled the objection.”

For Bertram and Gardiner, Wm. Tait. *Alt. Ed.* M’Cormick.
Reporter, Stonefield.

1788. January 22. PATRICK ALLISON *against* MARGARET PROUDFOOT and ADAM LITSTER.

TACK.

Lands let for Nineteen Years not to be subset without a special authority from the landlord.

[*Fac. Coll. X. 29; Dict. 15,290.*]

DREGHORN. I do not see that in a lease, or *locatio conductio*, there is a *delectus personæ*. In a lease of a house there is none, though there are plausible reasons for giving it; neither is there in lands: the *delectus* was, while a master was, in many instances, liable for his tenants’ faults: that is not the case now; and it would be wrong to maintain a maxim, and continue a practice, after the reason of the one and of the other has ceased.