

ney, which he cannot repay to his employers residing at a distance; and, by doing so, he commits a fraud against his employer, if the law will not allow him to send it to its real proprietor. By such conduct, the agent himself could not profit; neither can those who derive right from him. If the creditors seek equity, they must give equity; they cannot convert an equitable rule to an unjust purpose.

No. 24.

The Court adhered.

Lord Ordinary, *Glenlee*.
Agent, *Tho. Scotland*, W. S.
Agent, *W. Molle*, W. S.

Act. *H. Erskine, Wolfe-Murray*.
Alt. *Solicitor-General Blair, Forbes*.
Clerk, *Pringle*.

F.

Fac. Coll. No. 215. p. 178.

1806. February 28. THOMSON'S TRUSTEE, Petitioner.

HENRY THOMSON, corn-merchant in Newburgh, purchased 200 bolls of wheat from James Kinnear, tenant in Lord'scairnie, and 85 bolls from John Balfour, tenant in Ferneybarns. The wheat was delivered on 5th and 6th June 1804, on the last of which the money was to be paid. This, however, was not done. At last, on 11th June, Balfour, who acted also for Kinnear, called again for the money, but was obliged to accept of an indorsed bill for £290 in part payment, for which he granted the following letter:

No. 25.

In a contract of sale for ready money, payment, by means of an indorsation to a bill of exchange, a few days after the bargain, and within sixty days of bankruptcy, cannot be reduced by the other creditors.

“ Mr. Henry Thomson,	“ <i>Newburgh, 11th June, 1804.</i>
“ I acknowledge to have received from you, George Maclagan's and Com-	
“ pany, Kirkaldy, bill of	£290 0 0
	“ Off discount, 3 10 0
	<hr/> £286 10 0
“ For which I promise to be accountable, in the following	
“ manner:	
“ For myself,	£86 10 0
“ For Mr. James Kinnear, Lord'scairnie,	200 0 0
	<hr/> £286 10 0
“ And I am, Sir, yours, &c.	JOHN BALFOUR.”

On the 14th of June, Henry Thomson stopped payment, and his estate was sequestrated on the 22d.

The trustee brought a reduction of the preference obtained by Balfour and Kinnear, concluding for setting aside the right, and for repetition of the money.

The Lord Ordinary (21st December 1805) pronounced this interlocutor: “ Having considered this condescence, with the answers thereto, and whole process, and observing that the pursuer does not undertake to prove that the

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