

March 23,  
1814.

BANKRUPTCY  
—EFFECT OF  
AN ENGLISH  
COMMISSION  
OF BANKRUPT  
IN SCOTLAND.

Grounds on  
which judg-  
ment was  
given.

by law in another form, get the property out of his hands, was another question. Well,—the Appellant here had claimed under the English commission, and their Lordships already knew what followed.

This, then, being personal property merely, his opinion was, that the judgment ought to be affirmed for these reasons:—1st, That in the case of transference by assignment under a commission, intimation was not necessary. 2d, That, if necessary, it had in this instance been given. 3d, That the Appellant was precluded from taking advantage of his Scotch arrestment, by his having claimed under the English commission.

Judgment.

Judgment accordingly *affirmed*.

Agent for Appellant, CAMPBELL.

Agent for Respondents, NETTLESHIP.

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ENGLAND.

IN ERROR FROM THE COURT OF KING'S BENCH.

GOODRIGHT *d.* BURTON—*Plaintiff in error.*

RIGBY and others—*Defendants in error.*

March 30,  
1814.

RECOVERY.

By statute 14 Geo. 2, cap. 20, a recovery is good, if the deeds making the tenant to the *præcipe* appear to have been executed at any time within the term in which the

recovery is suffered, though such execution should appear to be subsequent, not only to the judgment and award of the writ of seisin, but also to the execution of that writ.

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RECOVERY.

**BY** settlement on the marriage of Richard and Sarah Williams, an estate for life, in certain lands and premises, was limited to Richard Williams, remainder to Sarah Williams for life, and (after remainders to their first and other sons in tail male, and to their daughters as tenants in common, in tail general) remainder to the heirs of the body of Sarah Williams, remainder to Mary Burton in fee. Richard Williams afterwards became bankrupt, and an Act of Parliament passed for vesting his estates in trustees for the benefit of his creditors. By this act, an estate for life was limited to Sarah Williams, with such remainders over (stating them thus generally) as were limited by the settlement, saving the rights of Mary Burton, &c.

Settlement on marriage of Richard and Sarah Williams.

Bankruptcy of Richard Williams, and Act of Parliament.

After the death of Richard Williams without issue, Sarah Williams suffered a recovery of the property in question, and sold the same to Rigby. In this recovery, the deed making the tenant to the *præcipe* was dated 20th November, 1778,—the judgment and award of the writ of seisin were dated 6th November, 1778; and the return was, that seisin had been accordingly delivered on the 10th November, 1778.

Recovery.

On the death of Sarah Williams without issue, Michael Burton, claiming under Mary Burton the next in remainder, demised the premises to *Goodright*, the Plaintiff in error, who brought his eject-

Ejectment.

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1814.

RECOVERY.

Error in D. P.

ment in C. P. against Defendant in error, Rigby. In T. T. 1792, judgment was given for Defendant in error, which was affirmed in K. B. in E. T. 1793; and thereupon Plaintiff in error brought his writ of Error in D. P. error, returnable in D. P.

In the Courts below it was contended, that the estate for life, limited to S. Williams by the Act of Parliament, was a new estate, and, being created by a distinct instrument, could not unite to the remainder to the heirs of her body limited by the settlement; and that therefore S. Williams was not tenant in tail when she suffered the recovery. To this it was answered, that the act did not divest S. Williams of any prior interest, but operated merely as a confirmation of her previous estate for life; but suppose it had been a new estate, yet, being less than an estate tail, it could not destroy the estate tail in remainder which she had at the time of passing the act: for even if she had by her own act divested herself of her estate for life, she would still have been capable of being vouched in a recovery, and of barring her estate tail and remainders over. (*Vide Driver v. Hussey*, 1 H. B. 269.)

But the point chiefly relied upon, and the only one insisted upon in the House of Lords, was, that the recovery was bad, inasmuch as the deed making the tenant to the *præcipe* was executed, not only after the judgment, and award of the writ of seisin, but after the time of the delivery of seisin by the Sheriff. By the common law, it was necessary that the tenant to the *præcipe* should be actually seized of the freehold at the time of the judgment.

Act of 14 Geo.  
2, cap. 20:—  
“ Every reco-  
“ very already

The act 14 Geo. 2, cap. 20, rendered the recovery good, provided the deed making the tenant to the *præcipe* appeared to be executed within the term in which the recovery was suffered, notwithstanding the previous judgment and award of the writ of seisin. But this remedy did not extend to cases where the writ of seisin had been executed; for then the conveyance is completed, by which the Recoveror's title must stand or fall. The Recoveree, after seisin delivered, had no estate; and the legislature could never mean to say, that a good tenant to the *præcipe* could be made by one who had no estate at the time. Though recoveries were now considered as common assurances, the forms of a real action must be observed. (*Swan v. Broome*, 3 Burr. 1596.)

To this the answer in Defendant's case was, that the words of the statute were positive, that every recovery should be valid, if the deed creating the tenant to the *præcipe* appeared to be dated within the term in which the recovery was suffered.

*Fonblanque* (for Plaintiff in error.)—Counsel on the other side not heard.

*Lord Eldon* (Chancellor.) The Sheriff returned in 15 days of St. Martin, that he had delivered seisin on the 10th, and the jury might have found the fact. But they had found merely that such was the return made, which was finding the evidence of the fact, rather than the fact itself. These were amendable according to the fact, even before the statute; and if the seisin had been on the 21st, the question would not have arisen. Taking it,

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“ suffered, or  
 “ hereafter to  
 “ be suffered,  
 “ shall be  
 “ deemed  
 “ good and  
 “ valid, to all  
 “ intents and  
 “ purposes,  
 “ notwith-  
 “ standing the  
 “ fine, or  
 “ deed, or  
 “ deeds, mak-  
 “ ing the te-  
 “ nant to such  
 “ writ, should  
 “ be levied or  
 “ executed  
 “ after the  
 “ time of the  
 “ judgment  
 “ given in  
 “ such reco-  
 “ very, and  
 “ the award  
 “ of the writ  
 “ of seisin,  
 “ provided the  
 “ same appear  
 “ to be levied  
 “ or executed  
 “ before the  
 “ end of the  
 “ term, great  
 “ session, ses-  
 “ sion, or as-  
 “ sizes, in  
 “ which such  
 “ recovery  
 “ was suffer-  
 “ ed, and the  
 “ persons  
 “ joining in  
 “ such reco-  
 “ very had a  
 “ sufficient  
 “ estate and  
 “ power to  
 “ suffer the

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RECOVERY.

“ same as  
“ aforesaid.”

Observations  
in Judgment.

however, that it was delivered on the 10th, and that the deed making the tenant to the *præcipe* was executed on the 20th, the question was, Whether, if the deed was executed before the end of the term, they were not bound by the statute to consider the tenant to the *præcipe* as regularly made? He was of opinion that they were; and it ought to be observed, that, besides other distinguished authorities, such had been the opinion in judgment of Lord Kenyon, who was peculiarly well versed in the law of real property. (*Vide* 2 H. B. 46.—5 T. R. 177.)

Judgment

Judgment *affirmed*.

Agent for Plaintiff in error, FLEXNEY.

Agent for Defendants in error, VINES.

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## SCOTLAND.

### APPEAL FROM THE COURT OF SESSION.

SURTEES and others—*Appellants*.

ALLAN—*Respondent*.

April 6, 1814.

USURY.—LI-  
MITATIONS.

ACTION upon stat. 12 Anne, sess. 2, cap. 16, against usury. Decided by the Court of Session, and the judgment affirmed on appeal, that the limitations in 31 Eliz. cap. 5, being understood as incorporated in the British stat. 12 Anne, applied to Scotland as well as to England.

Action on stat.  
12 Anne,  
against usury.

THIS was an appeal from a judgment of the Court of Session, in an action founded on stat. 12 Anne,