

both President and Arniston agreed. The President added a further reason, that a payment was marked on the bond.

* * (The case Morison against Strachan (Gordon) referred under the above case is No. 22. *voce* BANKRUPT, which, in the relative note, is mentioned to have been continued till the following Tuesday. Lord Elchies's note on that day is as follows :)

In January and February 1744 Gordon consigned to Morison stockings, and remitted to him a bill, both which he was directed to apply in payment of a bill of Gordon's due at London. Morison sold the stockings, but the purchaser being his creditor retained the price,—and he discounted or sold the bill, and did not apply it as directed. He broke in March, and in April there went against him a commission of bankruptcy. He surrendered himself and his effects and gave up lists of his debts, and *inter alia* this debt of Gordon's. But Gordon did not claim before the Commissioners, and Morison got the Chancellor's certificate that he had complied with the statute. Gordon sued him in this Court and recovered decret. Morison came lately to Scotland and was taken with caption at Gordon's instance. He presented a bill of suspension and liberation on the Chancellor's certificate, which with the answers Strichen reported. The Court was divided. Many thought that the certificate would have been of no effect here, even *ex comitate*, but because of the precedents Marshall and Yeaman against Spence, and Christie against Spence, were for a fuller hearing before determining finally, and therefore would have passed the suspension in order to try the question even without caution, but would not pass the liberation without caution at least *judicio sisti*,—and upon the vote it carried to pass upon caution *judicio sisti* when he shall be called for.

FOREIGNER.

No. 1. 1735, June 20. ANDERSON *against* STENTON.

THERE is nothing relative to this case in Lord Elchies's notes. In his Dictionary he refers to the printed papers. They are in the Advocates' Library. Lord Leven had pronounced an interlocutor sustaining the process “in order to affect any effects which the defenders (who resided in Berwick) might have in Scotland.” In a petition, drawn by H. Home, afterwards Lord Kames, it was pleaded ;—that an action simply for payment of a debt, such as this was, was very different from a forthcoming proceeding on arrestment *jurisdictionis fundandæ causa* ;—a citation of a native of Scotland residing abroad might properly be given at market cross, pier and shore, but a foreigner could not habilely be so cited,—consequently no decree containing a personal conclusion could be pronounced against him ;—the pursuer has condescended on no effects in Scotland, which if he had done or were still to do, they might perhaps be adjudged to him in this process; since although arrestment be generally the first step for preservation to fix the goods within

the jurisdiction, yet it is not necessary, as the jurisdiction is founded by the situation of the effects locally within the territory.

In the answer, written by Alexander Garden, it was contended that it would be time enough to condescend on effects, when the interlocutor as limited by the Ordinary became final, the argument in the petition being inconsistent, as even arrestment could not be used without previous citation.

It does not appear by any notandum upon the printed papers whether the petition was refused or not.—EDITOR.

No. 2. 1736, July 14. ROBERTSON *against* POTTER.

THE President said he remembered while he was at the Bar, the Lords several times in suits at the instance of strangers obliged them to find caution in the re-convention against them. I also thought the Lords may *causa cognita* ordain such caution at the instance of parties not residing within the jurisdiction of this Court, yet I thought there was no reason for it here where the reason of reduction was proved, and the proof only allowed to prove Robertson's defence;—and upon a division it carried no caution.

No. 3. 1739, July 19. ROBERTSON *against* POTTER and HORN.

See Note of No. 6. *voce* FACTOR.

No. 4. 1745, June 11. WESTCOMB *against* DODDS.

DODDS pursued adherence and aliment against Westcomb who once had an office in Exchequer, but which he resigned several years ago; and as he was originally an Englishman, so now he resides there; but the pursuer alleged she was married to him while he resided here, but after he gave up his office, though she says she did not know it. He compeared by his procurator in the Commissary Court, and declined the Court, as being not subject to that jurisdiction. They repelled the declinator, and the question was brought before us by advocacy. Tinwald thought this being *locus contractus* it founded the jurisdiction, especially being a *questio status*. Arniston was of the same opinion, because of its being a *questio status*. The Lords sustained the jurisdiction by a great majority, *renit.* President, and Minto, Ordinary.

No. 5. 1749, June 8. COUNT ANTONIUS LESLIE *against* GORDON.

COUNT ANTONIUS LESLIE having carried the succession to the estate of Balquhain by an appeal to the House of Lords against a judgment given by us in favours of Major Leslie of Pitcable, the Count as heir of entail raised reduction of a settlement of a part of the estate made by the last Balquhain in favours of his brother-uterine James Gordon, and failing him of his two sisters-uterine, whereof the eldest is now Lady Forbes, as made contrary to the limitations of the entail of the estate. James Gordon being excepted from the indemnity and a bill for high treason found against him, no compearance was made for him, but it was made in name of his two sisters substitutes, who objected to the Count's title, that he was incapable to succeed to land in Scotland as an alien born out