

No. 13. proceed, from the express reservation to that purpose, "according to the rules of law."

At common law, these posterior conjoined adjudications are unquestionably null; and as the introduction of conjunction was an exception from the general rule, the clause of the statute must of course be confined to the special case in which it is authorised. The words of the enactment are most precise; the Lord Ordinary before whom the first adjudication against any estate is called, shall ordain, &c. and the whole applies clearly to the process only; concluding with the express declaration, that posterior adjudications were to be governed by the former rules of law.

The change of expression from *any* to *first* adjudication, shows a deliberate purpose in the Legislature to alter the former practice. If conjunction with a posterior adjudication were allowed, this might be the consequence, that if any adjudication comes to be called when the year and day are nearly expired, and other creditors who could not have brought summonses into Court in time for the *pari passu* preference, should appear desiring to be conjoined, the regular adjudger would thus have the fund for his payment shared with those who had been dilatory, and who could not have drawn any thing but for his adjudication; besides, if it must intimated for twenty days, in order that the conjunction may take place, the year and day might elapse before his decree could be obtained, and he might thus lose the effect of his diligence entirely.

The Lords (17th June) sustained the objection stated to the adjudication of the creditors who were not conjoined in the first adjudication, in the name of George Andrew, but in one or other of the posterior adjudications.

To which judgment, on advising a petition with answers, they (24th November) adhered.

Lord Ordinary, <i>Ankerville.</i>	For the posterior Adjudgers, <i>Solicitor-General Blair,</i>
<i>Niel Fergusson.</i>	Agent, <i>Wm. Macdonald, W. S.</i>
Agent, <i>K. Mackenzie.</i>	Clerk, <i>Menzies.</i>
	Alt. <i>M. Ross, G. J. Bell.</i>

F.

Fac. Coll. No. 4. p. 8.

1802. February 6. EWING'S Creditors against DOUGLAS'S Attorney.

No. 14.

A Scotsman living and carrying on trade abroad does not fall under the Bankruptact.

HUGH DOUGLAS, originally a native of Scotland, had long carried on business in Demerara, from which he returned in November 1800 to Glasgow, where he resided for two or three months, settling some of his accounts, and arranging his future correspondence. In February, he again returned to Demerara, where the business, during this visit to Scotland, had been continued. A sequestration against him was applied for at the instance of the trustee for the creditors of William Ewing, to whom he was indebted. He was cited, being abroad, at the market-cross of Edinburgh, pier and shore of Leith: And Lord

Cullen ordered memorials, which were reported by Lord Woodhouselee, pro-
bationer.

Alexander Campbell, as attorney for Douglas.

Pleaded: He is indeed a native of this country; but of all jurisdictions, that founded *ratione originis*, is unquestionably the weakest; and in the right of granting a sequestration is an innovation on the common law, it must be limited by the words of the statute introducing it. The late bankrupt act 33d Geo. III. C. 74. is a law, intended for the regulation of Scottish bankruptcies alone. It applies only to the recovery and disposal of effects under the direction of the Court of Session, and is therefore intended to include Scottish traders alone; so that, in § 17. which is the material clause in this case, the expression "any person in that part of Great Britain, called Scotland, being a merchant or trader, &c. can mean those only who are merchants or traders in Scotland." But it was not meant to restrict the remedy to those who were actually in Scotland at the time, provisions being made for the case of the debtor being out of that country, if he really be a Scottish trader. Foreign merchants having estates here, are not to be comprehended within our bankrupt laws, because, without the aid of sequestration, the effects situate in this country are liable to diligence, and the *pari passu* preference of arrestments prevents all undue preferences. Douglas is a foreign merchant, carrying on trade at Demerara; His principal effects are situate there; and he was merely paying a transient visit to his native country, without any fixed residence in it. A merchant, wherever he is, is always occupied in his business, buying and selling, and forwarding his various concerns. Douglas, indeed, during his stay in Glasgow, granted two bills, and also sold a small ship, which it is said proves him to have been a merchant trading in Glasgow; but the bills are addressed to "Hugh Douglas, Esq. of Demerara, now in Glasgow." They are not payable at any house, or house of business of his own, (for he had none), but at the house of his agents; they are clearly granted as by a foreign merchant. With regard to the sale of the ship, one transaction will not fix the character of a Scottish trader upon him; and even his description in the deed of vendition, as *merchant in Glasgow*, the only writing where he is so designed, is still insufficient for the above purpose. Were the Scottish law of sequestration found applicable in this case, a trader might make himself subject to the varying systems of bankrupt law in all the countries to which the prosecution of an extensive commerce might occasionally conduct him.

Answered: If in the case of a merchant, principally residing abroad, having effects in this country, no sequestration could be awarded, partial preferences would thus be given to favourite creditors. But besides, if a foreign merchant resides for a while in this country, buys and sells here, no matter whether he has a house, or house of business here, or carries on his transactions in an inn or friend's house, and if he has effects here subject to the jurisdiction of the Court of Session, he, in effect, becomes a Scottish trader. The statute requires either

No. 14. that the debtor actually reside in Scotland, or at least had such residence or dwelling-house, or house of business, within a year prior to the application for sequestration. Now Douglas had resided between two and three months here, and he bought and sold goods as a merchant, for which he granted bills. He has also expressly styled himself "merchant in Glasgow" in an authentic and formal deed; and in the power given to his attorney, which entitles him to appear for him in this action, he admits the same thing, designing himself "late of Demerara, presently in Glasgow, merchant." His journey to Scotland was not so much a visit of friendship, as in prosecution of his trade; and the sound principle of the act of sequestration is, that foreign, like domestic merchants, cannot carry on trade, or hold property as traders in Scotland, without being subject to the bankrupt laws of this country, and without rendering that justice to their creditors, which the native merchant is bound to render.

The Lords were of opinion, that § 17. of the statute must be explained, in conformity with § 13. to mean traders in Scotland, and did not reach such cases as the present: Therefore refused to award the sequestration.

Lord Probationer *Tyler*, Reporter. Act. *H. Erskine, Fletcher.* Agent, *M. Montgomerie.*
Att. Solicitor-General *Blair, G. J. Bell.* Agent *J. Campbell tertius, W. S.*
Clerk, *Mennies.*

F.

Fac. Coll. No. 21. p. 43.

1802: *March 5,* *CLERK, and Others, the Adjudging Creditors, against The COMMON AGENT of the Postponed Creditors of CHARLES MACLEAN of KINLOCHALINE.*

No. 15.
Interpretation of the clause of the bankrupt act relative to conjunction of adjudications.

IT having been decided (See No. 13. p. 28. *supra*), that the conjunction of adjudications could take place only with the first adjudication, the postponed creditors next maintained, that the adjudication of George Andrew was not the first, and consequently that all those conjoined with his, could be in no better situation than those which had been conjoined with Butter's: That a bill had been drawn on 12th August 1793 by Colonel Allan Cameron upon the common debtor for £500, which was discounted by Donald Smith and Company; and that another bill for the same sum was likewise discounted by them on 3d September; these not being retired when due, diligence was done upon them; and an adjudication at the instance of Smith and Company, was raised against the estates both of Maclean and Cameron, against the last of whom, proceedings were also instituted in the King's Bench, he being then in England. The adjudication was intimated on 17th January 1795, in terms of the statute.

During the running of the period of intimation, the proceedings in England obliged Colonel Cameron to pay the debt. Instead of obtaining an assignation