

No. 16. a reasonable cause in the meaning of the statute, which therefore left it in the discretionary power of the Court to grant a reasonable indulgence.

Accordingly, the Lords granted the delay.

For the Creditors, *A. Campbell, junior.*

Agent, *A. Cunningham, W. S.*

For Wilkie, *H. Erskine, G. J. Bell.*

Agent, *Th. Martin.*

Clerk, *Sinclair.*

F.

Fac. Coll. No. 37. p. 77.

1802. *May 27.* KEIR *against* DICKEY.

No. 17.

Sequestration not applicable to the case of a foreign trader having effects in Scotland.

• LAURENCE KEIR, a native of Perthshire, settled early in life in London as a merchant; but his connection with this country led him to be much engaged in transactions in the Scotch markets. When his affairs became embarrassed, his creditors proceeded to attach his effects in this country, consisting of debts due to him. To prevent them from obtaining a preference in this way, he applied, in conjunction with Lyal, Petrie and Company, merchants in Montrose, for a sequestration of his estate within Scotland, for the benefit of all his creditors. This application was opposed by Henry Stewart Dickey, one of the arresting creditors, and was refused, (10th March 1802).

Keir reclaimed, and

Pleaded: The inconvenience which resulted from the mode of obtaining preferences at common law over the estates of insolvent persons, was the means of the introduction of the remedy which the bankrupt-law of Scotland now affords. In this struggle for preference every personal estate, to whomsoever it might belong, native or foreigner, was subjected. Accordingly, the statute 1772 has been found applicable to an English trader, having a quantity of silk in this country; *Cole against Flammaire*, No. 34. p. 4820. When it was renewed in 1783, it was thought expedient to confine the remedy of sequestrations to merchants; but it does not seem probable that it was intended to limit this privilege to Scotch merchants, when it must be so much for the advantage of all his creditors, that the funds in this country should be divided equally among them. The English statutes of bankruptcy declare, that strangers shall be subject to the sequestration laws; 21 Ja. I. chap. 19. § *ult.* *Cowper's Rep.* 398—403. It may seem dangerous to sequester the estate of a foreigner; but this is easily guarded against, by requiring his own concurrence, as in *Ewing's Creditors against Douglas*, 6th February 1802, No. 14. *supra*, for by § 17. of statute 1793, it is provided, that no sequestration shall be awarded against any person abroad, having an estate in Scotland, but with his own consent, unless he has resided or had a dwelling-house or house of business there, within a year previous to the application.

This petition was refused (27th May 1802) without answers; when it was observed on the Bench, That the 17th section of this statute was merely a continuation of the 13th, and is applicable to the situation of a Scotch trader who may have left this country; and consequently the provisions of the statute cannot be carried into effect but by his own concurrence; and this concurrence is necessary, as it might prove a hardship in many cases, that his effects should be sequestrated when he might know nothing about it, and when he might be completely solvent, although from negligence some of his debts here might remain undischarged. This short clause, it was remarked, was never intended to introduce so very great an alteration into the law, as that a foreign trader should be comprehended under the provision of the statute, when he is not mentioned in any of the former ones. In the English case quoted, the debtor not only was in England at the time when the commission of bankruptcy was issued against him, but the act of bankruptcy was also committed in that country; and these were declared to be essential requisites*.

No. 17.

For Kelt, G. J. Bell; Samples Agent, Ja. Buchan, W.S.

Alt. Hutchings; Agent; Geo. Anderson; Clerk, Colquhoun.

Fac. Coll. No. 44. p. 89.

1802. November 26.

BERTHAM *opains* RICHMOND and FREEBAIRN'S Trustee.

THE premiums due to underwriters make no part of the Broker's sequestrated estate, if not uplifted previously to his bankruptcy.

No. 18.

Fac. Coll.

* This case is No. 83. p. 7192. voce INSURANCE.

1802. December 10.

NISBET and Co's. TRUSTEE, Petitioner.

THE landlord is a preferable creditor over the effects of his bankrupt tenant, for all arrears of rent prior to sequestration, even when the right of hypothec does not apply.

No. 19.

Fac. Coll.

* * This case is No. 151. p. 15268. voce TACK.

* On the same day the Court likewise refused, without answers, a reclaiming petition for William Bishop and Company, merchants in Lancaster, praying for a sequestration of their Scotch effects.