

tor. The decision Pearson against Murray doth not meet the case, for whatever retention, &c. a Chamberlain may have against his constituent, that cannot hinder the debtor of a defunct to make payment to his executor creditor: And whatever my Lord Wintoun might plead, it is *jus tertii* to the suspenders to obstruct the charger's payment.

The Lords found, That the victual was not Mr. Christopher's, and that therefore the price was not *in bonis defuncti*, nor could be claimed by Bailie Hay as his executor creditor.

*Fol. Dic. v. 2. p. 412. Forbes, p. 150.*

No. 9.

1731. December. LORD STRATHNAVER against M<sup>c</sup>BEATH.

John Mathison, drover, bound for England with a drove of cattle belonging to himself, took the trust of another drove belonging to James M<sup>c</sup>Beath, which he undertook to sell upon his own account. Mathison dying in England, while a part of this drove remained on hand unsold, Robert Gordon, his fellow drover, disposed of the cattle, took up what money belonged to the defunct, and, after paying his funeral charges, &c. returned to Scotland with £.130, ready to be delivered to those having best right. In a competition betwixt an executor-creditor of the defunct's and the said James M<sup>c</sup>Beath, the Lords found the money lying by Mathison at his death, and intromitted with by Robert Gordon, and also the price of the cattle sold and received by Robert Gordon after Mathison's death, was presumed to be the price of M<sup>c</sup>Beath's cattle so far as extended to the value of the same, and not *in bonis* of Mathison; and therefore preferred M<sup>c</sup>Beath to the executors-creditors of Mathison. See APPENDIX.

*Fol. Dic. v. 2. p. 412.*

No. 10.

1725. December 16.

SIR WILLIAM COCKBURN against CREDITORS of THOMAS CALDERWOOD.

Alexander Martin being creditor upon the estate of Ryslaw by infeftment for upwards of £.30,000 Scots, the right after his death was adjudged by Doctor Hay and Thomas Calderwood, two of his creditors, in the year 1695. Thomas Calderwood, upon the title of Martin's infeftment, carried on a sale of the estate of Ryslaw, and got himself in effect ranked sole creditor, and at the same time became a purchaser; in which process Doctor Hay was at first called, but he died during the dependence, and there was no transference against his heirs, nor appearance made for them. Thomas Calderwood, immediately after the purchase, without being infeft, sold the lands to Mortonhall, and made over his decret of sale. Mortonhall paid some part of the price, retaining the remainder in his

No. 11.  
Price of  
lands, Whe-  
ther a *surro-  
gatum* for the  
lands?