

estate, which was not opposed by Sir Walter Montgomery Cuninghame, the proprietor; the Creditors applied to have the estate sequestrated: but this Sir Walter would not agree to, alleging that, as sequestration was a rigorous diligence, (Ersk., *B. 2, tit. 12, § 56,*) and as there was already a faithful honest factor upon it appointed by him, provided the same factor was continued, he was ready to find caution for his behaviour, in the same way as if he was a Lord's factor. But this measure the Lords did not incline to adopt: they thought it might open a door to fraud and collusion; therefore they, 25th February 1778, sequestrated the estate, but remitted to the Ordinary to hear parties on the nomination of the factor; and if it should appear to him that Sir Walter's factor was proper to be the Lord's factor, it was probable he would be the man.

---

1778. *March 5.*

WILLIAM HUNTER OF CLERKINGTON.

WILLIAM Hunter of Clerkington, merchant in Edinburgh, having become bankrupt, his effects were sequestrated on the late statute. But the creditors, suspecting that he had acted fraudulently, applied to have him examined in presence: he attended one diet, but the next he absconded and went to Holland. Mr Williamson, an heritable creditor, thereupon raised maills and duties, and an adjudication, which were executed; and then he applied for a sequestration. The Lords, in respect of the unusual circumstances of the case, got over the Act of Sederunt 1764, limiting such applications to be made before the 20th of February, and also that the actions were not in Court. And they sequestrated the estate.

---

## SERVICE

Of ——— KENNEDY.

ON the 24th March 1796, came on the service of ——— Kennedy, as sister and nearest heir to Lieutenant Kennedy, her brother.

It was *in limine* objected, That Lieutenant Kennedy was not dead; and, 2do, That the claimant was not nearest heir, in respect that the deceased, if he was dead, had a sister elder than the claimant, which elder sister left a child still alive, who was pursuing a declarator of legitimacy before the Commissaries.

ANSWERED,—It is altogether out of shape to enter here into the question, Whether Lieutenant Kennedy is dead? Hear our evidence, but do not say, before you hear it, that it does not prove his death.