

The petition was remitted to an Ordinary; who, after a proper inquiry into the facts, reported the cause to the Court.

'THE LORDS refused the petition.' See SEQUESTRATION.

Reporter, Lord Henderland. A&S. Buchan-Hepburn. Alt. Maconochie. Clerk, Home.
 Craigie. Fac. Col. No 304. p. 469.

1787. March 8. WILLIAM HUMPHRY against HUGH CRAWFURD.

WILLIAM HUMPHRY was creditor to a merchant whose effects were sequestrated under the act 23d of his present Majesty. Before the *nine* months had elapsed, he lodged his claim with Hugh Crawford, the factor; and he made oath as to the justice of it a very few days after that period, and before the scheme of division had been finally settled.

Being refused a share of the *first* dividend, which comprehended the whole funds belonging to the bankrupt, Humphry complained to the Court of Session; and

Pleaded: The penalty which has been imposed by the statute, on those who are negligent in producing or authenticating their grounds of debt, is not a total forfeiture of their right, but merely a delay in payment; the creditors thus dilatory being entitled, with an abatement only of 5 per cent. to draw out of the second dividend the same proportion of the sums owing to them, as if their proceedings had been perfectly regular. When, therefore, there is to be no second distribution, the whole funds having been collected before the first could be made, this provision of the statute must be understood to cease.

Nor, at any rate, could it be thought applicable to cases like the present, where a claim, though perhaps not precisely in terms of the statute, has yet been exhibited in such a manner as does not in the smallest degree stand in the way of that speedy division of the funds which the Legislature had in view. The same equitable practice ought here to be observed as in judicial sales of landed estates, where, even though a decret of certification has been pronounced, creditors who have neglected to appear are still allowed to do so, at any time before the scheme of division has been completely ascertained.

Answered: It is true, that a creditor who has not regularly proved his debt prior to the expiration of the *nine* months, may, notwithstanding, receive in the after distribution almost the same proportion of the sums due to him, as if he had originally complied, in all respects, with the injunctions of the law. But from this it will not follow, that the compulsory regulation is of no force where no second distribution can be made. The purpose of the law would, in this manner, be entirely frustrated in those instances in which such precautions are most necessary. The argument drawn from the modern practice, in judicial sales, is equally ill-founded. A factor named in pursuance of this statute must implicitly

No 274.

No 273.

23d Geo. III. c. 18.—A creditor lodged his claim with the factor, in a sequestration, within the nine months limited, but made no oath of verity till some days after. He was refused a share of the first dividend, which exhausted the whole fund. Found to have no redress.

No 273. follow the rules-it has prescribed. To authorise the smallest deviation, would be attended with the worst consequences.

It was separately *urged* for the complainer, That at least a share of the funds corresponding to his debt should have been set aside, agreeably to sect. 32. of the statute, till the issue of the litigation was known. But to this it was *answered*, That the above-mentioned clause did not relate to claims which had been irregularly made, but to those only, the justice of which required the discussion of courts of law.

'THE LORDS dismissed the complaint, and found expences due.' See SEQUESTRATION.

A&G. Cullen.

Alt. M^r Cormick.

Clerk, Sinclair.

Fac. Col. No 330. p. 506.

Craigie.

No 274.
12th Geo.
III. c. 72.

1787. March 8. WILLIAM MACILWRAITH *against* ROBERT RAMSAY.

A FACTOR appointed by the Court, in virtue of the act 12th Geo. III. c. 72. found liable in the penalties of malversation, after the statute itself had expired. See The particulars of the case, *voce* JURISDICTION. See FACTOR.

Fac. Col. No 329. p. 504.

1788. January 16.

HUGH FINLAY *against* BERTRAM, GARDNER, and COMPANY.

No 275.
23d Geo. III.
c. 18.—This
act provides,
that a party
desirous to be
conjoined in
a pinding,
must *summon*
the pinder
within a li-
mited time.
The appear-
ing in an ac-
tion, and pro-
ducing an in-
terest, found
equivalent.

FINLAY having pinded the effects of his debtor, who became bankrupt, in terms of the statute of 1696; and another creditor, in virtue of the late bankrupt statute, having raised an action against the pinder, Bertram, Gardner, and Company appeared in that action, producing their interest, and craving to be conjoined. —To this it was *objected* by Finlay, That the permission of the statute to other creditors to claim their proportions of the goods pinded, is qualified by this express *proviso*, 'that they make their claim by summoning the pinder;' whereas, here was no summons, but merely an appearance in an action already instituted.

The Court were unanimously of opinion, that the judicial demand made by the production of the interest in question, was a stronger step, in bar of the limitation 'of four months,' than the mere summoning of the pinder, which, as the simplest mode, was allowed for the convenience of the creditors claiming; and it was observed, that the same interpretation had been given to the act of federunt of 1662, by holding production of an *interest* as equivalent to *citation*, the expression which is employed in that act.