

1787. *January 31.* BEADIE *against* CREDITORS of HEGGIE.

No. 21.

AFTER a sequestration had been awarded on the statute, an arresting creditor of the bankrupt discovered, that the debts due to the creditors who had applied for sequestration were not of the amount required by the statute; and he craved, that the sequestration might be recalled on that ground. The Lords were of opinion, That any individual injured by an improper application might obtain redress from the persons who occasioned his loss; but that a sequestration, which is a measure intended for the general benefit of the creditors, ought not on that account to be recalled; and they refused the petition.

Fol. Dic. v. 4. p. 267. Fac. Coll.

* * This case is No. 272. p. 1248. *voce* BANKRUPT.

1797. *January 26.*

The Honourable Mrs. MARIANNE MACKAY and COLONEL FULLARTON,
against SIR HEW DALRYMPLE and Others.

IN the action of reduction and declarator of irritancy brought, in 1773, No. 7. p. 5239. by the Honourable Mrs. Marianne Mackay, with consent of her husband, Colonel Fullarton, against John Hamilton of Bargany, and Sir Hew Dalrymple, his next heir, both of law and of provision, the defenders produced a charter and infeftment in favour of Mr. Hamilton, in 1742, which, with his uninterrupted possession, they founded on as a sufficient title to exclude the pursuer by the positive prescription.

The Court pronounced an interlocutor, (9th February, 1796,) repelling this defence.

Mr. Hamilton died at Bargany, on the 12th February, 1796.

His repositories were immediately sealed up, in presence of the minister of the parish, and a justice of peace in the neighbourhood; and, on the next day, they were likewise sealed, by authority of the sheriff-substitute of the county, upon an application from the pursuer.

Mrs. Fullarton likewise presented a petition to the Court to sequester the estate till the issue of the action; which was refused, (9th March, 1796.)

Sir Hew Dalrymple, on the other hand, complained, by bill of advocation, of the warrant granted by the sheriff, and prayed that the seals should be removed.

The bill having been passed, the pursuer contended, That the warrant granted by the Judge-Ordinary, whose duty it is, in cases of disputed succession, to secure the papers of persons deceased, Act. Sed. 23d Feb. 1692, was perfectly legal. The question of sequestration, however, having been now determined against her,

No. 22.

The dependence of a reduction and declarator of irritancy, brought against the proprietor of an entailed estate, does not entitle the pursuer, upon the death of the former, to have his repositories sealed by warrant of the sheriff, nor to insist that an inventory of the papers found in them shall be made up at sight of the Court, to lie *in retentis* till the issue of the action: But the repositories having been sealed by warrant of