

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.

BANKRUPT.

1251

' THE LORDS, therefore, repelled the objection.'

No 275.

Reporter, Lord Dreghorn, Probationer,
Clerk, Home.

For Finlay, M' Cormick.

Alt. Tail.

Fac. Col. No 15. p. 27.

Stewart.

1788. December 24.

ROBERT PLAYFAIR and Others, against WILLIAM WALKER, GEORGE MAWER and Others.

THE act 23d Geo. III. c. 18. requires that the money recovered out of the bankrupt estate shall be lodged ' in a bank or banking-house: ' Found that a resolution of the creditors to lodge it, in the hands of individuals who were not bankers, was illegal. See The particulars of this case *voce* FACTOR.

No 276.
23d Geo. III.
c. 18.

Fac. Col. No 52. p. 92.

1790. February 9. ANDREW SCOTT, against JOHN VEITCH and Others.

No 277.

AN agent in the Court of Session, but who had engaged in the business of building houses for sale, presented a petition for sequestration, under the authority of the statute of 1783. On the part of some of his creditors, it was

23d Geo. III.
c. 18.—The Court considered a person who had carried on the trade of building houses for sale, although a writer by profession, to be entitled to the benefit of the act. They awarded sequestration.

Objected: That the application was not warranted by the statute, the petitioner being by profession a writer, and not, according to its terms, either a merchant, or a manufacturer, artificer, or mechanic.

The Court, however, considered the petitioner, notwithstanding the different nature of his principal profession, as within the description of the statute; and therefore

THE LORDS awarded the sequestration; and upon advising a reclaiming petition, with answers, adhered to that judgment. See SEQUESTRATION.

For Scott, &c. G. Ferguson.

Alt. N. Ferguson.

Clerk, Menzies.

Stewart.

Fac. Col. No 110. p. 206.

1794. January 16.

THE INTERIM FACTOR on the Sequestrated Estate of BERTRAM, GARDNER & Co. against DAVID THOMSON.

No 278.

33d Geo. III.
c. 74.

THE interim factor under 33d Geo. III. c. 74. is entitled to possession of the casks of writs and mandates produced for the creditors at the general meeting at which he is appointed. See The particulars of this case *voce* HYPOTHEC.

Fac. Col. No 91. p. 203.