

No. 184. 1796. July 1. MURCHIE *against* MACFARLANE.

Action was refused on a bill, where the date appeared to have been altered, though it did not appear by whom, or for what purpose the alteration was made.

Fac. Coll.

* * * This case is No. 55. p. 1458. *voce* BILL of EXCHANGE.

1798. June 6. JOHN SHIRRA *against* JAMES DOUGLAS.

No. 185.

The heir of a person who had subscribed the minutes of a meeting of creditors, as cautioner for the trustee, found not to be liable, the minutes not being probative.

The estate of Smith and Macnicol having been sequestrated, under the 23d Geo. III. C. 18. David Fleming, at a meeting of their creditors, was appointed trustee, and Samuel Douglas subscribed the minutes as his cautioner, along with the trustee and preses of the meeting. The minutes were not written by Douglas, nor attested by witnesses.

The effects of the bankrupt were accordingly conveyed to Fleming by order of the Court, and he entered upon the management; but having been afterwards removed from the office, in consequence of his bankruptcy, John Shirra, his successor, brought an action against him and Douglas, to force them to make good his intrusions.

Samuel Douglas having died before the merits of the cause were stated, and before there was an opportunity of proving the transaction by his oath, the action was transferred against his brother James, who did not dispute his predecessor's hand-writing; but he, *inter alia*, contended, that the minutes were not obligatory, from the want of the statutable solemnities.

The pursuer,

Pleaded: *1mo*, As the 23d Geo. III. C. 18. fixed no particular form in which the caution should be taken, the mode of doing so must be regulated by the practice; and the subscription of the minutes by the cautioner, without a formal bond, was always deemed sufficient.

The proceedings of creditors, under a sequestration, are judicial. Their minutes, though signed only by the preses, bind the whole creditors, § 8, 18, 19, 46. The trustee cannot act without finding security, and his confirmation is a judgment of the Court, that the previous requisites have been complied with.

2do, The intrusions of Fleming, upon the faith of the obligation undertaken by Samuel Douglas, bar the present action, *rei interventu*; 28th November, 1794, Brown against Campbell, Sect. 11. *h. t.* and case of Sinclair there referred to.

Answered: Regular bonds of caution were always granted under the original bankrupt act in the year 1772, and are so under the present. But by 23d Geo.