

No. 20.

1803. December 22.

GRAY, Petitioner.

A SUMMARY application by the seller, for the price of goods which had been delivered immediately before bankruptcy, on the head of fraud, not competent.

Fac. Coll.

* * This case is No. 25. p. 14983. *vide* SUMMARY APPLICATION.

No. 21.

A father, makes advances to his eldest son to a considerable amount, and in about two years becomes bankrupt. His creditors cannot reclaim these from the son out of any separate estate he may have since acquired.

1804. January 31. MACDOUGALL'S Creditors, against MACDOUGALL.

WHILE Mr. Allan Macdougall was proprietor of an estate valued at upwards of £30,000, and carrying on considerable business as a Writer to the Signet, though at the same time indebted in large sums to many persons, he defrayed the expense of promoting his eldest son John, then a lieutenant in the army, to be a captain in the 91st regiment. This amounted to £1214. 11s. 3½d, which was regularly entered to his son's account in his books, as paid to him, or by his orders, in the course of his recruiting, in the end of the year 1793, and beginning of 1794.

In the end of the year 1796, Mr. Macdougall stopped payment, and conveyed his estate to a trustee for behoof of his creditors, who in their name brought an action against Captain Macdougall for repayment of the sum advanced by his father.

The Lord Ordinary pronounced this interlocutor, (6th June 1801): "In respect it is not alleged that there was any fraud on the part of Mr. Allan Macdougall, or that any diligence had been done against him at the time the advances in question were made to the defender, sustains the defences, as soilzies the defender from the conclusions of the libel, and decerns."

The creditors reclaimed, and

Pleaded: 1. The money advanced was not in the way of *donation*, but was set down to the son's account, of which, the father himself having now occasion for paying his debts, and still more his creditors, have a just title to demand repayment. The whole *items* of the account remain undischarged in any way whatever. Neither by entry in his books, nor by any act or deed at the time, did he express his intention of making it a gratuity. Indeed, in justice to the rest of his family, (laying his onerous creditors out of the question), he could never have formed the idea of giving so large a sum to his presumptive heir, at the risk of exhausting his funds, and leaving nothing to a numerous family of younger children. A father and son are apt to deal loosely in matters of business, leaving it to after circumstances to determine what shape the transaction shall assume; if he had been prosperous in life, perhaps he never would have