

SUMMARY APPLICATION.

14983

improper to interfere in the management of estates; and some of the Judges seemed to insinuate, that the Court had gone too far in the case of Home, quoted by the petitioner.

No. 23.

For the Petitioner, *Corbet.*

Agent, *Wm. Johnstone.*

Clerk, *Pringle.*

*Fac. Coll. No. 77. p. 173.*

1803. *March 3.*

PAUL, Petitioner.

A petition was presented to the Court in the name of Joseph Paul, an infant, apparent heir of the late James Paul, with concurrence of Isobel Purves, his mother, praying for the benefit of the poors' roll, in an action for a warrant to sell against the heir next in succession.

The whole funds of the family consisted of a small heritable subject, upon which there were debts to the amount of one-fourth of its value. But, by a sale some reversion of the price might remain for the education and maintenance of the family, which however would almost be exhausted, if the expenses of an action of sale were to be incurred.

When the petition was moved, doubts were suggested by the Court with respect to the propriety of granting the benefit of the poor's roll in an action of this nature, where the possession of heritable property seemed inconsistent with the notion that the petitioner was a pauper.

A note was thereafter presented to the Court, stating the urgency of the case, and the total inability of the family being supported without the aid of the poor's funds of the parish.

But the Court conceiving it to be a dangerous precedent to admit any one who was in possession of an heritable subject to the benefit of the poor's roll, refused the petition.

For petitioner, *Reddie.*

Agent, *Hay Donaldson, W. S.*

Clerk, *Menzies.*

*J.*

*Fac. Coll. No. 93. p. 207.*

1803. *December 22.*

GRAY, Petitioner.

William Gray at Tinwald Mains, (28th September, 1803,) agreed to sell 40 bullocks, at the price of £.630, to John Campbell in Barncrosh. The cattle were, (3d October,) delivered, and an obligation received to pay the price on demand. The cattle were sent to England.

A sequestration of his effects was granted, (October 10th, 1803.)

Gray insisted that the whole transaction might be set aside at common law on the head of fraud; but as it appeared improper to apply to the Judge-Ordinary to

No. 24.

Summary application for the benefit of the poor's roll, refused to a person possessed of an heritable subject.

No. 25.

A summary application by the seller, for the price of goods which had been delivered immediately before

No. 25.  
bankruptcy,  
on the head  
of fraud, not  
competent.

obtain re-delivery of the cattle, as it was uncertain whether they had reached England, and as it was impossible to apply to the interim factor or trustee, as no meeting of creditors had taken place under the sequestration, and no manager of any description had been chosen, the most regular and most prompt method seemed to be, to make an application to the Lord Ordinary on the bills for an interdict, prohibiting the sale of the cattle, until it should be ascertained to whom they belonged.

A petition to this effect was presented, and the interdict granted; but, in the mean time, the cattle having reached England, Gray (October 12.) authorised a sale of them, under protest, that the price should not be intromitted with by the creditors. A competition for the price then became the question between John Napier, trustee for Campbell's creditors, and the seller. A summary application was made to the Court, praying "their Lordships to remit to the Lord Ordinary to investigate the circumstances of this case, and, on his Lordship's report, to grant warrant, ordaining the said John Napier to pay over to the petitioner the sum of £.630, being the value of the cattle delivered over to the late James Campbell, junior, with interest from 3d October last." This application was supported by a reference to sect. 35. of the bankrupt act, which, in requiring that the trustee shall first determine upon disputed claims, and that the Court shall review his sentence, it was said, applied only to the case where the party claiming makes his demand as a creditor; but the petitioner claims, as his exclusive property, what had never belonged to the bankrupt, over which therefore the trustee can have no controul, and therefore no power of deciding whether it belong to one party or another.

It appeared to the Court, however, that a formal action of reduction, on the head of fraud, was the only competent shape in which the merits of this question could be tried.

The petition was (December 22d, 1803,) refused.

For petitioner, *W. Erskine.*

Agent, *Alex. Young, W. S.*

Clerk, *Pringle.*

*Fac. Coll. No. 131, p. 289.*

1804. July 7.

KER, Petitioner.

No. 26.  
Summary application to have a deed of tailzie produced and recorded, competent, although the heir of entail who makes the application has not proved his propinquity.

A petition was presented to the Court, in the name of Colonel Walter Ker of Littledean, for himself, and as administrator in law for his sons, setting forth, That Robert, first Earl of Roxburgh, settled and entailed the earldom and estates of Roxburgh, Halydean, and others, upon a certain series of heirs, by a deed of nomination, designation and tailzie, executed in the year 1648; that this deed of entail was never recorded, but that Robert, Duke of Roxburgh, in 1747, made up his titles to the estate under it; that Duke Robert afterwards executed a disposition and tailzie of the lands contained in the former entail, and of certain other estates, in favour of his son and other heirs of tailzie; that accordingly, a charter of resignation under the Great Seal was exped