

1684. *December 13.* GEORGE SUITY of Balgon *against* JOHN HAY.

No. 3.

An apparent heir intending to reduce a deed *ex capite lecti*, petitioned for sequestration of the papers. Although no summons was yet raised, the papers were ordered to be produced and inventoried for inspection.

JOHN SUITY is prevailed with by the Lady Kettleston, and his mother's friends, to dispoise his whole estate, heritable and moveable, to a son of John Hay's, Mr. Thomas Hay, the clerk's nephew. George Suity of Balgon, his cousin-german and nearest heir, resolving to quarrel this deed, *ex capite lecti*, gives in a bill, craving a sequestration of the writs in one of the clerk's hands till the event. Answered, He has no interest, there not being so much as a summons raised; and John Hay excludes him with a valid disposition. Replied, He is neither seeking exhibition nor delivery, but only a sequestration of the papers, which can prejudice none. The Lords, on Kemnay's report, ordained John Hay, merchant in Edinburgh, to produce the whole writs in my Lord Kemnay's hands, to the effect the said George, as apparent heir, may have inspection thereof; and appoint them to be inventoried, and the inventory to be subscribed by the said John Hay; and then the whole writs to be given back again to the said John, to be made forthcoming by him to all parties who shall be found to have interest therein.

*Fol. Dic. v. 2. p. 365. Fountainhall, v. 1. p. 320.*

1697. *February 27.*

VISCOUNT TEVIOT *against* CREDITORS of DUNFERMLINE.

No. 4

A BURDENED estate being under sequestration at the creditors' instance, and the heritor forfeited, and the forfeiture declared, the Lords nevertheless refused, at the donatary's desire, to remove the factor, though the donatary was come in the heritor's place, and offered caution to the creditors to make the rents forthcoming to them, according as they should be preferred; yet here the Lords thought it was reasonable, that the donatary might call the factor to an account how he employed the rents, that there might be no embezzlement nor collusion.

*Fol. Dic. v. 2. p. 366. Fountainhall.*

\* \* \* This case is No. 1. p. 5109. *voce* GIFT of FORFEITURE.

1697. *November 9.*

HAMILTON of Hags, Bailie GRAHAM, and other Creditors of Sir James Stamford of Newmills, *against* JOHN STAMFIELD.

No. 5.

HAMILTON of Hags, Bailie Graham, and other creditors of Sir James Stamford of Newmills, gave in a petition, shewing, that John Stamford, his son and apparent heir, was *in lecto* dying, and had the whole writs of the lands whereof they had raised a summons of sale, and there was hazard of his wife's putting

the writs and evidents out of the way; therefore craved an order to cause sequestrate them, and seal up the chests, trunks, and cabinets, where they were, and put them in the custody of the clerk of the process; and to take his oath and his wife's anent any embezzlements; and if any of them has been given out, and where they are. The Lords, in this extraordinary case requiring haste, allowed them to be sealed and put in the clerk's hands, and his own oath to be taken; there being *periculum in mora*; but refused to examine her upon a bill, seeing the two reasons for her husband's oath did not meet in her case, viz. that he was on death-bed, and that it was his estate that was under roup; else there should be no use for exhibitions *viâ ordinariâ*, if such summary applications were always granted.

No. 5.

*Fol. Dic. v. 2. p. 366. Fountainhall, v. 1. p. 791.*

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1702. December 24. CREDITORS OF BROOMHALL, Supplicants.

SIR James Hall of Dunglass, George Baillie of Jerviswood, and other creditors of Sir Alexander Bruce of Broomhall, and Alexander Bruce, his son, gave in a petition to the Lords, representing, That Sir Alexander had obtained a protection against his creditors in Parliament, on deponing he had no means wherewith to pay them; and Alexander being in prison, had raised a *cessio bonorum*, and yet both of them were in possession of the lands of Broomhall, and had bought in the preferable rights both on it and Dairsie, in the names of extraneous confident persons; and therefore craved the rents might be sequestrated, and a factor put in for the creditors' behoof. The Lords refused the desire of the bill, in regard they were but personal creditors, and there was no ranking depending; and none but real creditors could seek summarily to dispossess the debtor. But, the very next day, Carmichael of Maulsley, Colonel Erskine, and other real creditors of Broomhall, presented a new bill, craying a factor to be put in at their instance; which the Lords remitted to one of their number to hear the parties thereupon.

No. 6.  
Who may apply for sequestration of a bankrupt estate, and for a factor?

*Fol. Dic. v. 2. p. 366. Fountainhall, v. 2. p. 168.*

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1704. January 22. WEIR and Others, Supplicants.

WILLIAM LAURIE, tutor of Blackwood, having deceased this day, application is made to the Lords by Sir George Weir of Blackwood, his grandchild, and other friends, representing, That he had many papers in his custody belonging to them, the Duke of Douglas, and others, which might be abstracted or embezzled; therefore craved a warrant to seal and sequestrate them, till friends might meet and inspect them. The Lords remembered there was an act of sederunt made

No. 7.  
Immediately upon the death of a party who had papers belonging to others, the Court, on pe-