

No. 22.
office, found
to be incom-
petent.

let; but as no person would take a lease of a cotton-mill for so short a period as four years, to which only his office and power of granting leases extended, he prayed for a warrant from the Court to grant a lease of it for 14 years, or such shorter number of years as should be judged expedient.

The Lords unanimously refused the petition as incompetent.

For the Petitioner, *D. Douglas.*

Clerk, *Pringle.*

D. D.

Fol. Dic. v. 4. p. 311. Fac. Coll. No. 111. p. 245.

* * The tutor afterwards brought a process of cognition and sale, containing a conclusion for authority to let the subject "for a term of years" beyond the pupillarity or minority of young Hallows, if it should be judged expedient, which was accordingly granted.

1803. *January.*

HENDERSON, Petitioner.

No. 23.

The Court do not interpose their authority to the curator of a lunatic, making application to be allowed to borrow money on his estate.

William Henderson, surgeon in the royal navy, purchased the lands of Catfins, which exhausted all the money he possessed, and afterwards granted an heritable security over them to a certain extent. His income consisted of the balance of the rents of these lands, and his half pay as a surgeon. He granted a lease, by which he incurred certain obligations in favour of the tenant. These were not implemented; and soon after the lease was entered into Henderson became insane.

His brother John applied to the Court, and was appointed *curator bonis* (July 2, 1801), having found caution for his management, in terms of the act of sederunt.

As there seemed to be no prospect of convalescence, a petition was presented to the Court in the name of the curator, stating, that the creditor in the heritable bond had applied for payment; that the tenant had required implement of the prestations in the lease, and threatened an action of damages; that the superior had demanded a composition for the proprietor's entry, otherwise he would raise a declarator of non-entry; and that the lands were found, upon investigation, to be charged with too great a proportion of stipend, which made it necessary to raise a reduction of the decret of locality.

In these circumstances of peculiar urgency, the petitioner craved the authority of the Court to borrow the sum of £500, which act of extraordinary administration, he stated, was absolutely necessary in the situation of his brother's affairs, and had been authorised by the practice of the Court; Home, 7th March, 1793, *voce TUTOR AND PUPIL.*

But the petition was refused.

It was thought that some of the matters contained in this application fell under the ordinary powers of a *curator bonis*. But, at any rate, it was conceived to be

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 poor's 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