

1764. November 15. PATERSON *against* ANDERSON of Kestock.

IN a summons of sale, containing a warrant in general to cite all the real creditors, a blank was left for the names of these creditors, which, by authority of the Lord Ordinary, was afterwards filled up from the executions against these creditors produced in process. It was *objected*, That the summons was informal, because it ought to have contained the names of the defenders; which objection was repelled, it appearing to be customary to libel a summons of sale in that manner, for a good reason, that it cannot always be certainly known before hand who are the real creditors; and therefore, it is convenient to leave this to the sagacity of the messenger.

Sel. Dec. No 224. p. 289.

* * * This case, as reported in the Faculty Collection, is No 17. p. 3691, *voce* EXECUTION.

1769. August 7.

HENRY BUTTER, Factor appointed by the Barons of Exchequer upon the forfeited estate of Cluny, *against* RONALD and ALEXANDER M'DONALDS.

THE question was a removing from certain lands, part of the annexed estate of Cluny.

Pleaded for the defenders; The lands possessed by them are under the direction not of the Barons of Exchequer, but of the trustees for annexed estates.

By 25th Geo. II. c. 41, his Majesty is empowered to vest in Trustees certain forfeited estates, and, among the rest, the estate of Cluny, for the purposes mentioned in the act. In consequence of this statute, certain trustees have been appointed by two several commissions in 1756 and 1761. These trustees have the sole management of the estates enumerated in the act, to the exclusion of the Barons of Exchequer.

Answered for the pursuer; There is no doubt, that, by the vesting act 20th Geo. II. c. 41, the Barons of Exchequer have the power of removing tenants, as well as of granting leases and levying the rents. It is *jus tertii* to the defenders to argue upon the different powers of the Barons of Exchequer and the trustees for annexed estates; and it must be presumed, that those officers know the limits of their respective duties and powers.

The Lords differed both as to the validity of the objection, and as to its competency. Some were of opinion, that here, as in every case, it was competent to a tenant to plead defect of title in a removing; and the defenders illustrated the matter, by the comparison of a second factory, which supersedes the first.

No 54.

In a sale of a bankrupt estate, it is usual to leave a blank in the summons for the names of the creditors, to be filled up afterwards, from the messenger's execution.

No 55.

A party may sist himself without any summons.