

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.

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.

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-

No. 7.
 tition, summarily ordered them to be sealed, without intimating the petition.

on the 23d February, 1692, for inventorying and securing the writs of persons *moribundi*, that they might not be put out of the way, and that there was *periculum in mora*; therefore, without either intimating the bill, or giving it up to see, or going to the minute-book, they sent one of the Clerks of Session to seal up his cabinets and coffers where his writs lay, to be opened when application shall be made, and all concerned are advertised to attend, it being better thus *rem salvam fore*, than, by after explications, to be pursuing them to exhibit upon oath; though it was judged somewhat singular, if upon our death our papers shall all be sealed up at the desire of some friends, without hearing others concerned, why no such restraint and embargo should be made; for if an apparent heir summarily intromit, it is a passive title; but he may put material papers out of the charter-chest, and these fraudulent conveyances are not so easily discovered thereafter, *et præstat in tempore occurrere quam vulnerata causa remedium quærere*.

Fol. Dic. v. 2. p. 365. Fountainhall, v. 2. p. 214.

1707. June 7. CATENACH against ALEXANDER FRASER.

No. 8.
 A factor of a sequestrated estate preferred to the rents in the hands of a tenant, tho' that tenant had obtained a gift of the debtor's life-rent escheat before sequestration, and general declarator after sequestration.

CATENACH, a factor nominated by the Lords for uplifting of the rents of a sequestrated estate during the competition of creditors, pursues Alexander Fraser for the mails and duties of his possession; who having alleged upon a preferable right, and a term being assigned to produce it, he did produce a gift of the common debtor's life-rent-escheat, and a declarator following thereupon, and therefore craved preference, because the rebellion was prior to any legal right or diligence of any of the other creditors.

The factor alleged: There was a competition of creditors, in which the defender might compear, and crave preference; but, in this process, he must be liable for his rents during the competition, because it was easy to allege that his right was preferable in a pursuit at the factor's instance, who was neither master of the creditors' right, nor concerned in the preference, but his trust was only to uplift the rents, and secure them for the use of the creditors that should be preferred.

The defender answered: That sequestrations were introduced and appointed by the Lords of Session for securing the rents during the competition of creditors endeavouring to attain possession; but sequestrators were never admitted to dispossess nor disturb any creditor who was in actual possession, and willing instantly to debate his right; and here the pursuit being for the rent of the lands possessed by the defender, the libel proves the possession, and the defender produces his gift prior to the sequestration, and defends his possession by the general declarator, and needs no special declarator for his own possession.

It was duplied: Sequestrators do not disturb or dispossess creditors who are in possession by virtue of real rights flowing from, or diligence against, the common debtor; but the pursuer can pretend to no such possession; for he entered as a