

1793. *December 7.*JAMES and WILLIAM DUFFS *against* LAURENCE SUTHERLAND.

Thomas Gordon having been by decree-arbitral ordained to pay a sum of money to James and William Duffs, on receiving certain papers from them specified in the decree, he was apprehended on a caption at their instance, and presented to Laurence Sutherland, one of the Bailies of Elgin, for imprisonment. Gordon, in his presence, offered to pay the money, provided the papers were delivered to him. The creditors were present, but had not the papers in their possession. Gordon then consigned the money with Sutherland, to remain in his hands till the papers were delivered, upon which the latter refused to imprison him.

The Duffs afterwards made a summary application to the Court, in which they complained of these and certain subsequent steps of Sutherland's conduct, particularly of his detaining the money after the papers were delivered, on pretence of an arrestment executed in his hands by Gordon, on the dependence of a reduction of the decree-arbitral which had been raised by him.

The defender objected to the competency of the complaint, contending, that in so far as it related to his refusal to imprison Gordon, an ordinary action ought, according to the practice in similar cases, to have been brought against him, and that the propriety of his detaining the money could only be determined in a multipounding.

The complainers, on the other hand, stated, that the ground of their complaint, being the alleged malversation of a public officer in the execution of his duty, warranted the present application; Angus *against* Ferrier, No. 13. p. 14976.

The Court, upon advising the petition and complaint, with answers, replies, and duplies, unanimously "sustained the complaint."

Act. *Wolfe Murray, Ja. Gordon.*Alt. *M. Ross.*Clerk, *Gordon.*

D. D.

*Fol. Dic. v. 4. p. 311. Fac. Coll. No. 83. p. 180.*1794. *March 1.*

JAMES HALLOWS, Petitioner.

Upon the death of Henry Hallows, cotton-manufacturer, James his brother was served tutor-in-law to his children. The eldest son, who succeeded to the heritable property, was ten years of age. James presented a petition, stating, That the chief property of his nephew consisted of a cotton-mill, the operations of which it had in the mean time been judged expedient to stop: That he was unwilling to apply for authority to sell it, because if it were sold, his pupil would be deprived of a favourable opportunity of prosecuting the trade of his father, if he should afterwards be so disposed: That on this account it was proper the subject should be

No. 21.

When a Magistrate illegally refuses to imprison a debtor, or detains money consigned in his hands, redress may be obtained by a summary petition and complaint.

No. 22.

A summary petition by a tutor, for authority to let an heritable subject belonging to his pupil for a period longer than the duration of his