

1738. June 28. DUKE of ROXBURGH *against* OLIPHANT.

No. 11.

WHEN an estate holding feu is sequestrated upon the application of creditors, the superior's interest in the estate, which is a subject belonging to a different party, cannot be sequestrated, and he therefore is entitled to levy his feu-duties by legal diligence, in the same manner as if there were no sequestration. Upon this footing, a superior having applied to the Lords for a warrant against the factor for payment of his bygone feu-duties, was preferred to the agent of the sale, who at the same time also applied for a warrant against the factor, to have a sum put into his hand for carrying on the sale. SEE APPENDIX.

*Fol. Dic. v. 2. p. 365.*

1745. February 13.

GRAHAM of Balgowan, and Others, Creditors, *against* FRASER of Lovat and Others, also Creditors of MURRAY of Ochertyre.

No. 12.

CERTAIN of Sir Patrick Murray of Ochertyre's creditors gave in a petition, craving to have his estate sequestrated, to which he consented, that so arrestments and sequestrations of each particular year's rent might be prevented. This was opposed by others of the creditors, on this ground, that the foundation of sequestration was the competing diligence of creditors; and therefore, when the rent was affected, it might be sequestrated; when the land was affected, it might; but when no diligence had affected the land, it was not in the Lords' power to sequestrate it.

An estate burdened with debts, but not affected with diligence, cannot be sequestrated.

The Lords were of opinion they could not sequestrate the estate, which was not affected by diligence, if any of the creditors opposed; and therefore refused the petition.

*Act. Graham.*

*Alt. Ferguson.*

*Gibson, Clerk.*

*Fol. Dic. v. 4. p. 265. D. Falc. v. 1. p. 75.*

1750. January 18.

The CREDITORS of ROBERT SIMPSON of Thornton, Petitioners.

No. 13.

AN application being made for a sequestration of the lands of Thornton, whereof a ranking and sale was depending, it was objected to on this ground, that the sale was void, the debtor's whole lands not being brought into it. Answered, That was no objection to the sequestration.

Sequestration of a bankrupt estate refused, on account of the nullity of the sale.

But it being replied, That there was no other process in Court but the sale, "The Lords refused to sequestrate."

*Fol. Dic. v. 4. p. 266. Kilkerran, No. 1. p. 508.*