

days of the application, are bound to pay over the value of them to the factor, or, if not disposed of, to restore the *ipsa corpora*; and the Court, when they award the sequestration, are in use to pronounce an interdict prohibiting the pinders, in that case, to dispose of the *ipsa corpora* of the goods pinded, till further order of Court. A petition was this day, 21st February 1777, presented for James M'Lune, tenant in Bombay, praying a sequestration, and an interdict against a pinder, in common form; but it further set forth, that a parcel of cattle had been carried off the farm, under pretence of a previous sale. And therefore it prayed for a similar interdict against the purchaser from disposing thereof. This last, as to the cattle, the Lords refused. The sales mentioned in the Act are those only posterior to the sequestration, not such as are prior; these must be regulated by other rules than those of this statute.

SEQUESTRATION OF THE EFFECTS OF A COMPANY.

ALTHOUGH the late statute seems confined to individuals, the Lords have extended it to Companies; but they refused to extend it to a royal burrow, *viz.* the Burrow of Abberbrothick. But how shall a Company obtain the benefit thereof? If the Company applies for sequestration, the Lords are in use to grant it; but where creditors apply, and the Company must be rendered bankrupt, it would appear that the mode of doing it is by a pinding of their effects. At least it is difficult to see how the other criterions of bankruptcy will apply.

FORM OF PROCEEDING BEFORE THE ORDINARY, OR IN COURT.

PROCEEDINGS in a sequestration, if unfinished at the end of a Session, go to the Ordinaries on the Bills during the ensuing vacation, and may be proceeded in before them. And in the same way, where begun before the Ordinary on the Bills, may be proceeded in before the Court; but this must be begun by petition,—for, until then, the cause is not in Court; and not only must this form be observed, but the petition, before the Ordinary, must be printed and boxed with the other petition, in order that the Court may see what has been going on.

1778. February 25. SEQUESTRATION of the ESTATE of LAINSHAW.

A JUDICIAL sale having been made of the estate of Lainshaw, as a bankrupt

estate, which was not opposed by Sir Walter Montgomery Cuninghame, the proprietor; the Creditors applied to have the estate sequestrated: but this Sir Walter would not agree to, alleging that, as sequestration was a rigorous diligence, (Ersk., *B. 2, tit. 12, § 56,*) and as there was already a faithful honest factor upon it appointed by him, provided the same factor was continued, he was ready to find caution for his behaviour, in the same way as if he was a Lord's factor. But this measure the Lords did not incline to adopt: they thought it might open a door to fraud and collusion; therefore they, 25th February 1778, sequestrated the estate, but remitted to the Ordinary to hear parties on the nomination of the factor; and if it should appear to him that Sir Walter's factor was proper to be the Lord's factor, it was probable he would be the man.

1778. *March 5.*

WILLIAM HUNTER OF CLERKINGTON.

WILLIAM Hunter of Clerkington, merchant in Edinburgh, having become bankrupt, his effects were sequestrated on the late statute. But the creditors, suspecting that he had acted fraudulently, applied to have him examined in presence: he attended one diet, but the next he absconded and went to Holland. Mr Williamson, an heritable creditor, thereupon raised maills and duties, and an adjudication, which were executed; and then he applied for a sequestration. The Lords, in respect of the unusual circumstances of the case, got over the Act of Sederunt 1764, limiting such applications to be made before the 20th of February, and also that the actions were not in Court. And they sequestrated the estate.

SERVICE

Of ——— KENNEDY.

ON the 24th March 1796, came on the service of ——— Kennedy, as sister and nearest heir to Lieutenant Kennedy, her brother.

It was *in limine* objected, That Lieutenant Kennedy was not dead; and, 2do, That the claimant was not nearest heir, in respect that the deceased, if he was dead, had a sister elder than the claimant, which elder sister left a child still alive, who was pursuing a declarator of legitimacy before the Commissaries.

ANSWERED,—It is altogether out of shape to enter here into the question, Whether Lieutenant Kennedy is dead? Hear our evidence, but do not say, before you hear it, that it does not prove his death.