

1781. July 24.

BLACKWOODS, Supplicants.

No. 17.

CERTAIN persons of the name of Blackwood, in the character of apparent heirs portioners, brought a process of ranking and sale of their ancestors effects, heritable and moveable. After the process was called in court, and a proof allowed, in common form, they applied by petition to the court, for a sequestration of the heritable subjects, bygone rents, and other effects, not already attached by the ancestor's creditors.

The Lords were of opinion, that a competition of rights alone, authorised them to take subjects into their possession by sequestration; and as there was no competition in this case, "they refused the petition."

Act. Rolland,

C.

Fol. Dic. v. 4. p. 265. Fac. Coll. No. 75. p. 129.

* * See No. 19. p. 14350.

1782. February 20.

HENDERSON against BUDDO.

No. 18.

A DEBTOR's effects having been sequestrated, in terms of the statute 1772, and a factor appointed; one of the creditors thereafter proceeded to point some household-furniture, which the factor had allowed to remain in the debtor's possession.

A friend of the debtor interposed on this occasion, and relieved the goods, by granting his acceptance for the debt and expense of diligence; but, before it became due, insisted in a reduction, on this ground, That the subjects having been vested in the factor for the behoof of the whole creditors, could not be carried off by diligence at the instance of an individual; and that, of course, the acceptance having been extorted by concussion of legal measures, ought to be set aside.

Pleaded for the creditor: The debtor's effects not having been inventoried, as the statute prescribes, remained subject to the diligence of his creditors. At any rate, the objection here urged is only pleadable by the creditors or their factor, not by the debtor or any of his friends.

Answered: The factor's not having expedite inventories in due time, is, by the statute, made the ground of summary complaint against him; and on this account he may be removed from his office; but that will not entitle a creditor to establish a preference by diligence on the articles omitted. The bill in question being a consequence of the diligence, must stand or fall with it.

The Lord Ordinary sustained the defences: But the Lords considered the pointing to have been illegal, and therefore

"Altered that interlocutor, and reduced the bill."

Lord Ordinary, *Braxfield* Act. *Maconochie*. Alt. *Alex. Ferguson*. Clerk, *Home*.

C.

Fol. Dic. v. 4. p. 266. Fac. Coll. No. 34. p. 55.

Whether a factor's not having made up inventories of the debtor's effects entitles creditors to attach these effects?