

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

No. 22.
office, found
to be incom-
petent.

let; but as no person would take a lease of a cotton-mill for so short a period as four years, to which only his office and power of granting leases extended, he prayed for a warrant from the Court to grant a lease of it for 14 years, or such shorter number of years as should be judged expedient.

The Lords unanimously refused the petition as incompetent.

For the Petitioner, *D. Douglas.*

Clerk, *Pringle.*

D. D.

Fol. Dic. v. 4. p. 311. Fac. Coll. No. 111. p. 245.

* * The tutor afterwards brought a process of cognition and sale, containing a conclusion for authority to let the subject "for a term of years" beyond the pupillarity or minority of young Hallows, if it should be judged expedient, which was accordingly granted.

1803. *January.*

HENDERSON, Petitioner.

No. 23.

The Court do not interpose their authority to the curator of a lunatic, making application to be allowed to borrow money on his estate.

William Henderson, surgeon in the royal navy, purchased the lands of Catfins, which exhausted all the money he possessed, and afterwards granted an heritable security over them to a certain extent. His income consisted of the balance of the rents of these lands, and his half pay as a surgeon. He granted a lease, by which he incurred certain obligations in favour of the tenant. These were not implemented; and soon after the lease was entered into Henderson became insane.

His brother John applied to the Court, and was appointed *curator bonis* (July 2, 1801), having found caution for his management, in terms of the act of sederunt.

As there seemed to be no prospect of convalescence, a petition was presented to the Court in the name of the curator, stating, that the creditor in the heritable bond had applied for payment; that the tenant had required implement of the prestations in the lease, and threatened an action of damages; that the superior had demanded a composition for the proprietor's entry, otherwise he would raise a declarator of non-entry; and that the lands were found, upon investigation, to be charged with too great a proportion of stipend, which made it necessary to raise a reduction of the decret of locality.

In these circumstances of peculiar urgency, the petitioner craved the authority of the Court to borrow the sum of £500, which act of extraordinary administration, he stated, was absolutely necessary in the situation of his brother's affairs, and had been authorised by the practice of the Court; Home, 7th March, 1793, *voce TUTOR AND PUPIL.*

But the petition was refused.

It was thought that some of the matters contained in this application fell under the ordinary powers of a *curator bonis*. But, at any rate, it was conceived to be