

1782. June 15. JEAN-VYES CAMPBELL, Petitioner.

No. 19.

Sequestration awarded of an estate brought under sale by an apparent heir.

THE petitioner, as apparent heir of her father, brought a process for selling his estate, in terms of the statute 1695. After this process had been called in Court, and a proof allowed of the rental, debts, &c. she applied for a sequestration of the lands.

The Lords considered the ancestor's estate, by the depending process of sale, to be equally *in manibus curiæ* with one brought under sale by creditors, by virtue of the statutes 1681 and 1690; and therefore awarded the sequestration.

For the Petitioner, *Honyman*.

C. *Fol. Dic. v. 4. p. 266. Fac. Coll. No. 44. p. 71.*

* * See a contrary decision, August, 1781, Blackwoods, petitioners, No. 17. p. 14349.

1782. August 3. BUCHANNANS *against* GRAY and HALL.

No. 20.

Sequestration refused, where real creditors are in possession, though their debts are under challenge.

CERTAIN heritable subjects, which belonged to the deceased Robert Hall, had been possessed by Mr. Farquhar Gray and Miss Hall, by virtue of heritable securities granted by the proprietor.

Alexander and Jean Buchannans, adjudging creditors of the said Robert Hall, instituted a process of ranking and sale of his creditors and estate, and also a process of count and reckoning against the heritable creditors. In these actions, sundry objections were stated to the validity of the grounds of debt founded on by the heritable creditors. It was likewise maintained, that the debts, supposing them unexceptionable, had been extinguished by the creditors' intromission with the rents.

Matters being in this situation, they applied for a sequestration of the lands under sale. It was opposed by the heritable creditors; who

Pleaded: Whatever may be the result of the objections moved by the adjudging creditors to the debts upon which possession has been attained, it is evident, that these objections cannot be determined in the course of a summary application for sequestrating the lands; and that the debts at this period must be held as legal and subsisting. The present application is therefore improper in many respects. It would be unjust to deprive heritable creditors of the possession which they hold by the deed of the proprietor, and for the satisfaction of just debts. Such step is also unnecessary; because the heritable creditors, by entering into possession, have become answerable to all concerned for the proper management of the subjects. And it is moreover repugnant to practice, that sequestrators should be appointed to dispossess or disturb creditors who are in actual possession, and ready instantly to debate their rights.

“ The Lords refused to sequesterate.”

For Buchannans, *Arch. Campbell*.

For Gray and Hall, *G. Fergusson*.

Fol. Dic. v. 4. p. 266. Fac. Coll. No. 61. p. 97.