

considered the words of the act 1696, and the decision of the Creditors of Menzies, (No 258. p. 1226.) in the year 1715, finds, That the deeds under challenge are not reducible under the act 1696. And to this judgment the Lords adhered, upon advising a reclaiming petition for the pursuers, with answers for the defender. See No 217. p. 1163.

Lord Ordinary, *Hailes.*

Agt. *Hay Campbell, Sir John Belsches.*
Clerk, *Hume.*

Alt. *Crosbie, Dalzell.*

Fol. Dic. v. 3. p. 68. Fac. Col. No 76. p. 117.

Craigie.

No 267.
Sequestration was delayed till the 59th day. Found, that the deed could not be challenged upon the act 1696.

DIVISION VI.

Cases which peculiarly regard the particular terms of the late Bankrupt Statutes, from 1772 downwards.

1772. August 4. SAMUEL COLE, &c. against EPHRAIM FLAMARE, &c.

THE act 12th Geo. III. c. 72. found to extend to the case of a foreign debtor's effects in this country. An application for sequestration thereof, in terms of that act, in name of the debtor, found competent, and sufficiently authorized by a general letter of mandate to his brother, whom he had originally entrusted as infitor, to dispose of the goods in Scotland: This, in a question with English creditors, who had attached the effects by arrestment. See The particulars of the case, *voce FORUM COMPETENS.* See *NEGOTIORUM GESTOR.* See *SEQUESTRATOIN.*

Fac. Col. No 24. p. 65.

No 268.
12th Geo.
III. c. 72.

1778. January 18.

ROBERT MONTGOMERY, and Others, against JOHN PARKER.

THE personal estate of William Wilson, a bankrupt, was sequestrated upon the statute 12mo Geo. III. c. 72. After the effects had been converted into money, a scheme of division lodged in the process, and the Lord Ordinary had allowed all concerned to see, and give in objections; but before his Lordship had reported the scheme; an interest was given in for Montgomery and Wilson, creditors who had not formerly appeared. These creditors insisted, that they were entitled to draw their proportional share of the first dividend, in consequence of the interest then produced.

No 269.
12th Geo. III.
c. 72.—Creditors who did not lodge their claim with the clerk, within nine calendar months, were found to have forfeited their share of the first distribution.

No 269.

An objection was suggested to this claim by the factor, upon the 6th and 10th clauses of the statute, bearing, in substance, That such creditors as shall not produce their claims, with the vouchers thereof, and make oath on the verity of their debts, 'within nine kalendar months after the date of the sequestration,' shall not be entitled to any share in the first distribution of the debtor's estate among the creditors.

The nine kalendar months were expired before the claim or vouchers were lodged.

Answered for the creditors: That another rule is adopted in § 11th of the statute, by which it is enacted, 'That such creditors only, who shall have produced their vouchers, and grounds of debt, and proved the verity thereof, before the day fixed for each distribution, as before mentioned, shall be entitled to a share in such distribution.' By this, it seems to be meant, that it is sufficient if the debts are proved, and vouchers produced, before the day fixed for the distribution.

The Court found, 'In respect that the claims of Montgomery, Wilson, and Smith, with the vouchers thereof, were not lodged with the clerk to the sequestration before the expiry of nine kalendar months from the date of the sequestration, that, therefore, they were not entitled to draw any share of the bankrupt's effects in the first distribution.'

For the Factor, *Ad. Ogilvie.*

Alt. Rolland.

Fac. Col. No 5. p. 10.

No 270.

A factor under 12th Geo. III. paid the bankrupt's landlord the rent due to him, without being claimed and proved as the statute directs. Objection to this payment sustained.

1779. February 6.

JAMES DICKSON *against* ADAM WATSON.

GEORGE LANDELS possessed part of a farm as subtenant under his father James Landels. Having fallen into arrear of half a year's rent, the Sheriff, upon the application of the father, sequestrated his crop and stocking for security of this arrear, and of the half year's rent to become due at the next term.

Before that time George Landels became bankrupt. His personal effects were sequestrated upon the act 12th Geo. III. and a factor was named. The factor sold his crop and stocking, and paid up to James Landels the year's rent due by his son. The factor, in the state of the bankrupt's funds lodged by him, took credit for this article; to which it was

Objected by a creditor of the bankrupt: That this arrear of rent is paid by the factor, without having been claimed and proved by the creditor as the statute directs, and therefore cannot be allowed.

Answered for the factor: The creditor, in this case, had a security over the crop and stocking of the bankrupt by his hypothec, and would have been entitled to draw his payment out of these subjects, without coming into this Court to