

claim and instruct his debt. He had obtained a sequestration of these subjects from the Sheriff, for making his debt upon them effectual, before the sequestration under the statute had taken place. In these circumstances, the creditor was not obliged to part with the effects to the factor, and make the circuit of claiming and proving his debt before he could recover it. He might have proceeded to sell the subjects under the authority of the Sheriff, by whom they were sequestrated; and thereby got immediate payment of his rent.

There is nothing in the statute to have prevented him from following this course. The statute does not take away the right of hypothec itself, nor the summary methods founded on it, which have been constantly practised by landlords for recovery of their rents.

As, therefore, the creditor could have recovered his debt out of the effects, by means of the sequestration, without claiming in this Court, it was for the interest of the other creditors to pay up the debt, and relieve the effects of this burden.

Replied for the objector: The sequestration awarded by the Sheriff could have no other effect prior to an actual sale, than to secure the subjects falling under the hypothec from being embezzled. It did not transfer the property of the effects to the bankrupt's father, and could not prevent them from falling under the general sequestration of this Court.—So it was found in the case of *Brown contra Gordon and Frazer, 1773, (not reported.)*

These effects, therefore, could not have been disposed of by the father at his own hand, or by warrant of the Sheriff. The debt, no doubt, continued preferable in consequence of the hypothec; but there was no method of obtaining payment, except by claiming and proving it, as directed by the statute.

The Court 'sustained the objection to the rents stated as paid to the father, these debts not having been claimed or proved by the father in terms of the statute.' *See HYPOTHEC.*

Lord Ordinary, *Alva.*

Aët. McLeod.

Alt. Sinclair.

Clerk, Tail.

Fac. Col. No 67. p. 127.

1784. February 19.

RICHARDSON *against* SHIELLS.

No 271.

12th Geo.
III. c. 72.

A PERSON had obtained a sequestration under 12th Geo. III. c. 72. of the effects belonging to himself and his deceased father.

In a competition with an executor creditor, it was the opinion of the Court, that sequestration, in pursuance of the bankrupt statutes, was an inept diligence for attaching the effects of a defunct.

See The particulars of the case, *voce* SERVICE and CONFIRMATION.

Fac. Col. No 147. p. 229.