

No. 19.
of his creditors, must proceed with concurrence of his Majesty's advocate, and by summary application.

Steel objected, That the action was absurd and incompetent; because, 1st, It contained very severe penal conclusions, and yet wanted the concurrence of the King's Advocate, who alone had a title to insist *ad vindictam publicam*; 2dly, The accusation ought to have been brought before the whole Lords by a complaint, and not before a single Judge by an ordinary action.

Syme answered, That several such processes had been sustained; however, to prevent any doubt, he offered to amend his libel, by obtaining and adding the concurrence of the King's advocate.

The Lord Ordinary allowed Syme to condescend on precedents, which he having failed to do, his Lordship took the cause to report; and the Court was of opinion, that the accusation could only be brought before the Inner-House by a complaint; that the King's advocate was the only proper party to insist for such penal conclusions; and that it was absurd to amend a libel by adding the name of the proper prosecutor; therefore

The process was dismissed.

See TITLE TO PURSUE.

Act. Geo. Cockburn. Alt. M^cLaurin. Reporter, Alesmoor. Clerk.

J. M.

Fol. Dic. v. 4. p. 311. Fac. Coll. No. 28. p. 50.

1786. June 24.

DAVID WALKER, Petitioner.

No. 20.

The effects of Drummond, a dealer in grain, were sequestrated in virtue of the bankrupt statutes.

David Walker afterwards preferred a petition to the Court of Session, setting forth, That he had consigned a quantity of wheat belonging to him, in the hands of the bankrupt, who had made another consignment of it to a third party, from whom the factor on the sequestrated estate had demanded it, in behalf of the creditors in general.

He therefore prayed for a warrant to serve the petition on the factor; and that, on the particulars in it being proved, the second consignees might be ordained to deliver the wheat to the petitioner.

The Court considered the application as incompetent. When, as in the case of the creditors of Kemp*, subjects have once been in the possession of a factor appointed by the Court, an order for restitution may, on cause shown, be summarily granted in favour of the rightful owner. But this was here impracticable, as the wheat still remained in the custody of a third party, who could not be brought into Court, without the usual forms and *induciæ* of citation.

“The Lords refused the petition.”

For the petitioner, Dean of Faculty.

C.

Fol. Dic. v. 4. p. 310. Fac. Coll. No. 280. p. 431.

* No. 47. p. 4947.