

1787. *January 31.*JOHN BEADIE *against* The Other CREDITORS of THOMAS HEGGIE.

No 272.  
23d Geo. III.  
c. 18.—A sequestration had been obtained at the instance of a creditor, whose debt was less than the sum specified in the act. Alleged, that this rendered the proceedings null. The Court found otherwise.

AFTER the effects of Thomas Heggie had been sequestrated in virtue of the statute 23d Geo. III. and a factor appointed, it was discovered by John Beadie, an arresting creditor, that the debts due to the persons, at whose instance these proceedings had been held, were not of the extent required by the statute.

He therefore preferred a petition to the Court of Session for recalling the sequestration; and

*Pleaded:* The chief defect of the statute of 1772, authorising the Court of Session to award sequestrations, arose from its not being confined to those persons who, from the nature of their business, as well as the extent of their commercial transactions, were the proper objects of such a regulation. The after law, therefore, passed in the 23d of his present Majesty, while it limited sequestrations to the case of merchants and traders, was particularly careful to remedy this defect, by enacting, that no sequestration should be awarded, unless on the application of *one* creditor for L. 100, of *two* for L. 150, or of *three* for L. 200. It is indeed true, that where a sequestration has been obtained, of the effects of one, who afterwards appeared not to be of that condition in life, which comes under the statutory description, the right of applying for redress has been specially limited to thirty days. But as no similar provision occurs with regard to the extent of the debts, this circumstance seems rather to confirm than to weaken the present argument.

*Answered* for the other creditors: To prevent sequestrations where the amount of the debts owing by the bankrupt is very inconsiderable, it has been provided, that the creditor or creditors applying, shall make oath, that their claims are of a certain extent. But from this it is not to be imagined, that where the debts due to those creditors have, either by mistake, or even from a more unjustifiable cause, been exaggerated, the whole proceedings are on that account to become ineffectual and void. This might be reasonable enough with regard to the parties in whose names the application was made; but with respect to the creditors in general, who are naturally led to consider a sequestration as a suspension of every other mode of diligence, it would be highly unjust. Nor, in fact, does this statute labour under so great an imperfection. Though any individual injured by an improper application, may doubtless obtain redress from the persons who have occasioned his loss, still the sequestration itself subsists in its fullest extent. The limited provision which has been made for recalling a sequestration, where the employment of the bankrupt has been erroneously described, would be alone sufficient to show this to have been the intention of the Legislature.

The petition was remitted to an Ordinary; who, after a proper inquiry into the facts, reported the cause to the Court.

'THE LORDS refused the petition.' See SEQUESTRATION.

Reporter, Lord Henderland. A&S. Buchan-Hepburn. Alt. Maconochie. Clerk, Home.  
 Craigie. Fac. Col. No 304. p. 469.

1787. March 8. WILLIAM HUMPHRY against HUGH CRAWFURD.

WILLIAM HUMPHRY was creditor to a merchant whose effects were sequestrated under the act 23d of his present Majesty. Before the *nine* months had elapsed, he lodged his claim with Hugh Crawford, the factor; and he made oath as to the justice of it a very few days after that period, and before the scheme of division had been finally settled.

Being refused a share of the *first* dividend, which comprehended the whole funds belonging to the bankrupt, Humphry complained to the Court of Session; and

*Pleaded*: The penalty which has been imposed by the statute, on those who are negligent in producing or authenticating their grounds of debt, is not a total forfeiture of their right, but merely a delay in payment; the creditors thus dilatory being entitled, with an abatement only of 5 per cent. to draw out of the second dividend the same proportion of the sums owing to them, as if their proceedings had been perfectly regular. When, therefore, there is to be no second distribution, the whole funds having been collected before the first could be made, this provision of the statute must be understood to cease.

Nor, at any rate, could it be thought applicable to cases like the present, where a claim, though perhaps not precisely in terms of the statute, has yet been exhibited in such a manner as does not in the smallest degree stand in the way of that speedy division of the funds which the Legislature had in view. The same equitable practice ought here to be observed as in judicial sales of landed estates, where, even though a decret of certification has been pronounced, creditors who have neglected to appear are still allowed to do so, at any time before the scheme of division has been completely ascertained.

*Answered*: It is true, that a creditor who has not regularly proved his debt prior to the expiration of the *nine* months, may, notwithstanding, receive in the after distribution almost the same proportion of the sums due to him, as if he had originally complied, in all respects, with the injunctions of the law. But from this it will not follow, that the compulsory regulation is of no force where no second distribution can be made. The purpose of the law would, in this manner, be entirely frustrated in those instances in which such precautions are most necessary. The argument drawn from the modern practice, in judicial sales, is equally ill-founded. A factor named in pursuance of this statute must implicitly

No 274.

No 273.

23d Geo. III. c. 18.—A creditor lodged his claim with the factor, in a sequestration, within the nine months limited, but made no oath of verity till some days after. He was refused a share of the first dividend, which exhausted the whole fund. Found to have no redress.