

unpaid. If they are produced, and the subjects sold, the objector will get payment; if they are not, he can suffer nothing by the production.

No 59.

The Lord Ordinary ordered the writings called for to be produced, reserving to Mr Mackenzie his right of hypothec.

The COURT, upon advising a reclaiming petition and answers, 'remitted to the Lord Abercromby to ascertain the amount of the petitioner's account; and upon the petitioner's lodging in the clerk's hands the papers in question, found him entitled to a warrant upon the factor, for the amount of the account, when so ascertained, out of the funds received or to be received by him out of the subject *in medio*, and remitted to the Lord Abercromby Ordinary to proceed accordingly.'

Lord Ordinary, *Abercromby.*  
Alt. *Charles Hope.*

For Mr Mackenzie,, *G. Fergusson, Cha. Hay.*  
Clerk, *Sinclair.*

D. D.

*Fol. Dic. v. 3. p. 295. Fac. Col. No 25. p. 52.*

1793. November 28. CHRISTIAN CALLMAN *against* HAMILTON BELL.

CHRISTIAN CALLMAN employed Hamilton Bell writer to the signet to raise a process of declarator of marriage and legitimacy, at the instance of herself and her daughter, against Janet Gourlay, sister, and (as she alleged) representative of the late Robert Gourlay, to whom Mrs Callman said she had been married. She also employed Mr Bell to take out an edict in the name of her child, for serving her executrix, as nearest of kin to her deceased father. The same step was taken by Janet Gourlay, who contended, that she ought to be preferred to that office; and, after some litigation, she prevailed before the Commissaries.

No 60.

An agent's hypothec over the papers of his client, found not to extend to the proceedings in a process which he had been employed to conduct.

Mr Bell, on the part of his client, brought their judgment under review, by a bill of advocation, which was refused.

At this stage of the action, Christian Callman notified to Mr Bell, that she was to change her man of business; and insisted that he should deliver up to her the bill of advocation, writings produced, and the whole procedure which had taken place upon it in the bill-chamber, and also the process of declarator which was going on in the Commissary-court.

Mr Bell refused to comply with this demand, upon the ground of his having a right of hypothec over the whole papers in his possession, till he should get payment of the account due to him as her agent.

Upon this Christian Callman obtained a caption against him, for not returning the bill of advocation, &c. into the hands of the clerk.

Mr Bell having presented a representation, praying that it should be recalled, the Lord Ordinary on the bills found, 'That an agent is not entitled to stop procedure in a depending process, by withholding the steps of process from his client or the clerk; as his hypothec only extends over title-deeds, securities,

No 60.

and other documents properly belonging to his client ; and therefore refuses to recall the caption, so far as it applies to the recovery of the steps of process, either before the Commissary-court or this Court.'

Mr Bell presented a petition, reclaiming against this judgment ; in which he founded on the case, 28th January 1784, Scott against Lothian \*.

*Observed* on the Bench ; An agent, so far from having an hypothec over the steps of a process, is not even entitled to retain title-deeds or other writings of his client, of which he has got possession merely in consequence of their having been produced in it. But if they were in his hands prior to their production, as in the case of Scott against Lothian, he will not on that account lose his hypothec over them. In the case of Forsyth against Sym †, 18th February 1791, the claim of hypothec was repelled in circumstances similar to the present.

The petition was unanimously refused without answers.

Lord Ordinary, *Esqgrove*.  
R. D.

For the Petitioner, *W. Stewart*. Clerk, *Menzies*.  
*Fol. Dic. v. 3. p. 295. Fac. Col. No 78. p. 172.*

1794. January 16.

The INTERIM FACTOR on the sequestrated Estate of Bertram, Gardner, and Company, against DAVID THOMSON.

No 61.

An agent, whose client's estate was sequestrated, ordained to deliver the bankrupt's papers to his creditors, on receiving a warrant for payment of his account out of the funds *in medio*, as soon as it should be adjusted.

DAVID THOMSON, writer to the signet, was agent for Messrs Bertram, Gardner, and Company, and in that character had many of their papers in his possession. On their bankruptcy, he acted as clerk to the general meeting of creditors, at which Richard Hotchkis was appointed interim factor. The grounds of debt produced for the creditors were immediately returned to them, but their oaths of verity and mandates were left with Mr Thomson.

The interim factor having demanded from Mr Thomson the whole papers he held in his possession, whether as agent for the bankrupts, or clerk to the general meeting of creditors, under reservation of his right of hypothec, Mr Thomson, though willing to allow inspection of them in his own hands, refused to quit possession of the former, until an account due to him by the bankrupts was paid, or at least an obligation granted for payment of it ; and contended, that Mr Hotchkis was not entitled to possession of the latter, as they belonged to the creditors, and not to the bankrupts, of whose effects only he was appointed to take charge ; 33d Geo. III. c. 74. § 15.

Upon this Mr Hotchkis presented a petition to the Lord Ordinary on the bills, to which his Lordship ordered answers to be lodged, and both to be presented to the Court.

\* Not reported.

† Not reported.