

1798. *June 2.*

The TRUSTEE for the Creditors of PETER FORRESTER, *against* The TRUSTEE for the Creditors of JOHN TURNER, and ALEXANDER MONTGOMERY.

No 279.
The commissioners chosen to assist the trustee on a sequestrated estate are not entitled to an allowance for their trouble.

At a meeting of the creditors of Peter Forrester, whose estate was under sequestration, it was proposed, that the commissioners who had been appointed to assist the trustee, in terms of 33d Geo. III. c. 74. § 28. should have an allowance from the funds, on account of the extraordinary trouble they had taken in the management, and the trustee was directed to apply to the Court to sanction the measure.

A petition was accordingly presented to the Lord Ordinary on the Bills, which was opposed by the Trustee for the creditors of John Turner, and by Alexander Montgomery, creditors of Forrester, who contended, that the office of commissioner was gratuitous.

The Court, upon advising the petition, with answers, &c. which they had ordered to be printed, were so clearly of this opinion, that they refused the petition, and found the creditors, who had advised the measure, personally liable in the expence of the application and opposition to it.

D. Douglas.

Fac. Col. No 77. p. 182.

1798. *June 15.*

ROBERT GENTLE and Others, *against* JOHN KIRK and JOHN STEEDMAN.

No 280.
In ascertaining the four kalendar months after bankruptcy, within which the poinder of a bankrupt's effects must be cited, under the 33d Geo. III. c. 74. § 6. the day of bankruptcy is excluded.

JOHN KIRK and JOHN STEEDMAN, creditors of Andrew Bennet who was insolvent, executed a poinding of his effects in August 1796.

On the 27th of that month, Andrew Bennet was incarcerated at the instance of another creditor, and thus rendered bankrupt in terms of the statute.

The 33d George III. c. 74. § 6. provides, under certain limitations, 'That no poinding of the moveables belonging to such bankrupt, used within sixty days before the bankruptcy, or four kalendar months thereafter, shall give a preference to such poinder; but that every other creditor of the bankrupt having liquidated grounds of debt, or decrees for payment, and summoning such poinder, before the said four months are elapsed, shall be entitled to a proportional share of the price of the goods so poinded.'

Robert Gentle, and certain other creditors of Bennet, brought an action against Kirk and Steedman, founded on this clause of the statute, and concluding for a share of the poinded goods.

The defenders were cited in this action on the 27th December 1796; and their defence was, that they had not been summoned within four months from Bennet's bankruptcy, as required by the statute.

The Sheriff found, 'That the application by the pursuers, claiming under