

No 56.

The Court sustained the objections to the preference claimed by Mr Scott; and they adhered to this interlocutor, on advising a reclaiming petition and answers.

Reporter, *Lord Swinton.*

For Mr Scott, *Elphinston, Chs. Hay.*

Alt. Lord Advocats, *Abercromby.*

Clerk, *Menzies.*

S.

Fol. Dic. v. 4. p. 216. Fac. Col. No 34. p. 55.

* * * This case was appealed :

THE HOUSE OF LORDS, 7th April 1789, Ordered and Adjudged, That the appeal be dismissed, and the interlocutors complained of be affirmed.

S E C T. XIV.

Effect of a Process of Sale in dependence.

1778. *July 7.*

CREDITORS OF YORK-BUILDINGS COMPANY *against* FORDYCE.

No 57.

IN 1735, the Annuitants on the estates of the York-Buildings Company raised a process of ranking and sale of these estates. This action was depending in 1744, when the Duke of Norfolk and others, partners of the Company, applied by petition to the Court for a sequestration, setting forth, That the Company, as proprietors, were giving leases of their lands at an under rent. The Court remitted to an Ordinary to inquire into the facts; and, in the mean time, prohibited the Company to give any lease without the Court's authority. In the interval betwixt presenting the petition and this prohibition, the Company had prorogated a subsisting lease of Belhelvie, to David Fordyce, for 37 years after expiry of the current lease; and Fordyce and his assignees continued to possess on this lease from 1745 to 1776, when the greatest part of the annuities being expired, an act of Parliament was obtained by the postponed creditors for a total sale of the Company's estates. A sequestration ensued; and a factor being appointed, with powers to bring reductions of the leases, a process was brought for that purpose against the assignees of Fordyce. *Urged* for the pursuers, The Company had no power to grant the lease in question; they were insolvent; the annuitants drawing the rents; the lands adjudged; and a process of

sale and petition for sequestration in Court. *Answered*, The Company had not been deprived of the administration, either by their own trust-deeds, or by the diligence of their creditors; and the granting leases was within their ordinary powers of administration.—THE LORDS sustained the reasons of reduction.

No 57.

Affirmed in House of Lords.

Fol. Dic. v. 4. p. 216. Fac. Col.

. This case is No 76. p. 8380. *voce* LITIGIOUS.

A similar judgment was, the same day, pronounced in the case of a lease granted by the York-Buildings Company to Dr Steuart Threipland, for 99 years. Creditors of York-Buildings Company *contra* Threipland.—Reversed in House of Lords.

. This case is No 77. p. 8383. *voce* LITIGIOUS.

EXPENSES OF RANKING AND SALE. See EXPENSES.

See APPENDIX.