

1708. November 19. Mr HUGH CAMPBELL against ———.

MR HUGH CAMPBELL, minister at Muirkirk, being creditor to Mr Mathew Campbell of Waterhaugh in considerable sums, he raises a ranking of the creditors, and that being extracted, in a process of roup and sale of the estate, wherein he proves the rental and value of the estate, with the debts, infestments, and incumbrances affecting the same, being expired adjudications, by comparing thereof with the rental, it appears they exceed the value of the estate in L. 5000 or L. 6000 Scots; so that he is clearly proved to be notour bankrupt, and a day is appointed for the roup, and all the intimations at the market-crosses and kirk doors duly executed, and a few days before the diet set for the roup, Mr Mathew, the debtor dies; whereupon Mr Hugh, the creditor, pursuer of the sale, applies to the LORDS, craving a diligence to cite Margaret Campbell, his daughter and apparent heir, to sustain the person of a defender in the sale, which was granted, and the roup continued for some weeks, and she accordingly cited; and then she gives in a bill to the LORDS, representing she had a double interest to be heard before the roup could proceed; *imo*, As a creditor, having got a bond of provision from her father for ten thousand merks; *next*, as apparent heir, she behoved to have her *annus deliberandi*, and the process stopt till she consider whether she will enter heir or not. *Answered* for the creditors, That she was merely called *dicis causa* by a punctilio of form, without any manner of interest or concern; for by the 17th act 1681, when the legal reversion was expired, the sale may proceed without the bankrupt's consent, and *ita est* the adjudications here are all long ago expired, so she is only a naked name; and she can plead nothing as creditor, for she is called *ab initio* in the ranking, and never compeared to produce any interest, knowing that her bond could never stand in competition with her father's lawful creditors, and their diligences; and she has as little to say as apparent heir, for there is nothing subsumed against her *passive*; neither is she charged to enter heir, nor is there any personal conclusion against her, so that it is *inauditum* to claim her year of deliberation in this case, seeing the estate is exhausted, the adjudications expired, her father declared notour bankrupt, and the estate could be sold whether he consented or not. THE LORDS found sales were a summary executive process, and in this case where the adjudications were expired, the apparent heir could plead no *annus deliberandi*, and therefore refused her bill, and ordained the roup to go on; otherwise if apparent heirs got their year of deliberation in such cases, roups, by which many now bruik their estates, should come to be involved in endless delays. See Act of Sederunt, 23d November 1711, § 5.

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A common debtor died a few days before the time appointed for a judicial sale of his estate. The Lords refused to stop the sale, upon an application of the apparent heir, craving the benefit of the *annus deliberandi*.

*Fol. Dic. v. 1. p. 468. Fountainball v. 2. p. 464.*