

It is no good argument that the defender, if the mode of diligence which he pursued be inept, could have adopted no other. But in fact he might have adopted other methods. He might have charged Professor Stuart, at any time after his bond, with horning on the obligation to infeft, or he might have maintained an action for compelling him to get the feudal title of the lands completed in his person; or he might *qua* creditor have adjudged the lands or minute of sale from Professor Stuart for satisfaction of his whole debt, and might then have pursued an action against James Aird, the Professor's author, for compelling him to establish the feudal right in his own person, in implement of the minute; or he might have maintained such an action against Aird, in the name of Professor Stuart himself, for the purpose of compelling him to infeft the Professor; and upon his failure have likewise adjudged in implement. All these methods were probably avoided, because the defender foresaw that he would have been in no better state than a common adjudger, and that the other creditors adjudging within the year would have come in *pari passu* with him.

The Court pronounced the following interlocutor. "The Lords having resumed the consideration of this process, with the report formerly made by Lord Hailes, and advised the same, with the memorials and informations *hinc inde*, Find, that the adjudication led by Sir John Whiteford was led im- properly, therefore reduce the same, together with the charter and infeftment following thereon, and remit to the Ordinary to proceed accordingly, and farther to do as he shall see just."

A reclaiming Petition against this interlocutor was refused without answers.

Lord Reporter, *Hailes.* Act. *George Wallace, Rae.* Alt. *M^cQueen.*
J. W.

1776. December 20.

GEORGE LANG *against* ROBERT GILCHRIST and WILLIAM WALLACE.

ROBERT GILCHRIST granted an heritable bond to George Lang for the sum of £100 Sterling, containing the ordinary clauses, and binding him to infeft Lang in a tenement of land, with the yards and pertinents thereof, and in which he was accordingly infeft. Gilchrist having afterward become bankrupt, executed a trust disposition of the said heritable subject in favour of William Wallace for behoof of his creditors. Lang, about the same time, raised a summons of adjudication against Gilchrist, concluding that the said heritable subjects should be adjudged from Gilchrist, and declared to pertain and belong to him. Against this Gilchrist pleaded, that the trust disposition was designed to satisfy both the pursuer and his other creditors, and that there were sufficient funds for payment to him as a preferable creditor. At any rate, it was insisted that the defender was entitled, this being the first adjudication, to take a

No. 7.

No. 8.

A creditor cannot insist for a general decree of adjudication, after an offer is made by the debtor to pay him the whole sum.

No. 8. day to produce a progress, purge incumbrances, &c. in terms of the act of Parliament. The Lord Kames Ordinary pronounced, 2d Aug. 1776, the following interlocutor: "Repells the defence founded on the trust disposition alleged to have been granted by the defender for the behoof of his creditors, and assigns the 12th of November next to the defender to produce a progress, purge incumbrances, and fulfil the other points of the act of Parliament, and first alternative thereof anent adjudications, with certification."

Gilchrist desirous, as he said, to do justice to the pursuer, and to prevent, at the same time, the hardship and loss which would accrue to the other creditors by the adjudication, made offer to the pursuer, by the hands of the attorney for William Wallace, of the principal sum contained in his heritable bond, with interest from the term of payment to the term of Martinmas then next. This offer the pursuer chose to reject; and the progress not having been produced by the defenders, the pursuer extracted an act, which, having come to be called before the Lord Elloch Ordinary, his Lordship pronounced, Nov. 29th 1776, the following interlocutor: "Circumduces the term against the defender for not producing a progress, purge incumbrances, and performing the other conditions of the act of Parliament, in terms of the act, and adjudges, decerns, and declares."

The defenders, considering the Lord Ordinary as exauctorated, applied by petition to the whole Lords, who, upon advising the petition with answers, found that the pursuer was obliged to receive the principal sum and interest due as at Martinmas last, with necessary expenses; but find that the defenders are liable in the expense of the petition."

Lord Ordinary, *Elloch.*

Act. *Morthland.*

Alt. *McCormick.*

J. W.

1797. June 20. EDIE and LAIRD, Petitioners.

No. 9.

A creditor, during the dependence of a judicial sale, and after obtaining a dividend out of part of the lands, on which he was preferably secured, adjudged the remaining lands, as a title to the purchaser, for the whole debt, without deduction of

THE lands of Kerse and Clannochyett, belonging to Mr. Weir, were brought to judicial sale.

Several heritable securities had been granted by him on Kerse, and, among others, an heritable bond to Edie and Laird; but none over Clannochyett.

In 1793, a decree of ranking was pronounced. In 1794, Edie and Laird received a large dividend out of the price of Kerse, and in 1795, they adjudged, as a title to the purchaser, the lands of Clannochyett, for their whole debt, without deduction of the dividend which they had received; but in order to avoid the objection of *pluris petitio*, they previously stated in a minute, that their object was merely to draw full payment of the balance due to them.

The other creditors adjudged within year and day.

The price was insufficient to pay the whole creditors.

Edie and Laird claimed to be ranked for the whole sum in their adjudication, and to be repaid the expense of it. But the Lord Ordinary found, "That