

NO. 2.

In a process of adjudication, the defender is entitled to take a day to produce a progress, whatever may be the consequence to the pursuer, of the delay. See No. 154. p. 12067.

1776. Dec. 13.

PEADIE, Petitioner.

PEADIE being creditor to the deceased Hamilton of Overtown, with the view of obtaining a preference to the creditors of the heir, upon the act 1681, c. 17. raised an adjudication against the late Mr Hamilton's estate, upon one diet, the induciæ whereof did not elapse until Saturday the 11th of January; and the three years from the death of Mr Hamilton expired upon Monday the 13th of the same month. As the 11th of January fell to be within the Christmas recess, Peadie petitioned the Court that they would authorise any one of their number to decern in the adjudication, reserving all defences *contra executionem*, without allowing the defenders to take a day to produce a progress; the unavoidable consequence of which must have been, to prevent the decree being obtained within the three years from the defunct's death, and thereby preventing the petitioner's legal diligence from affecting the estate of Overtown.

The Court considered that there were no grounds whatever which could induce them to grant this petition; for if they were even sitting upon the 11th of January, yet that could not avail the petitioner, for the Court could not dispense with the alternative of the act of Parliament allowing the defenders to take a day to produce a progress; and although the Court have sometimes *ex gratia*, allowed second adjudications to pass on one diet, for the sake of establishing a *pari passu* preference, yet they never would allow so new and extraordinary a measure as a first adjudication to pass upon one diet, when that diligence was intended to establish the preference of the single creditor.

The Court refused the petition.

For the Petitioner, *J. Boswell*.

D. C.

1800. Dec. 11.

DUNCAN MACKAY *against* The COMMON AGENT in the Ranking of MARGARET WATT'S CREDITORS.

NO. 3.

An adjudication set aside, where the debtor

DUNCAN MACKAY, on the 7th June 1796, obtained a decree of constitution for L. 177 : 6 : 6 against Margaret Watt and John Grieve, her second husband, for his interest, as representing her first husband Daniel Morgan.