

1744.  


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 COOPER  
 v.  
 HUNTER, &c.

“ paid to the respondents the sum of L.50 for their  
 “ costs in respect of the said appeal.”

For Appellant, *A. Hume Campbell, Al. Forrester.*

For Respondents, *Ro. Craigie, A. Murray.*

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DAVID COOPER of Newgrange, - *Appellant*;  
 ALEXANDER HUNTER of Balskelly, } *Respondents.*  
*et alii,* - - - - - }

11th December, 1744.

ADJUDICATION.—COUNT AND RECKONING.—A creditor having adjudged the estate of his debtor, and likewise the right to an adjudication which the debtor had led against certain other lands; found that in a question with another adjudger of these last lands, he was bound to account for the rents and profits of the former, into possession of which he had entered in virtue of his degree.

No. 74. THE estate of Newgrange was adjudged by Dr. Lamb of Balskelly.

Lamb's proper estate (of Balskelly) and also the interest which he had thus acquired in the lands of Newgrange, were afterwards adjudged by four of his creditors.

Newgrange was brought to a judicial sale, and was purchased by one Pyper, and by the decrees of ranking and sale the proportion of the price pay-

able by the purchaser to each of the creditors (including Dr. Lamb) was fixed.

1744.

COOPER

v.

HUNTER, &amp;c.

Pyper having afterwards purchased from Janet Lamb and Cramond (two of the adjudging creditors) their adjudications, in so far as they affected Newgrange, sold his whole right to the appellant. The other two adjudications against Lamb's estate and his interest in Newgrange were acquired by the respondent, who having obtained possession of Balskelly in virtue thereof, brought an action of mails and duties against the appellant and the lands of Newgrange for the whole debts on which the adjudications had been led.

In defence, it was pleaded that the respondent had received full satisfaction of his claims against Lamb's estate, by the perception of the profits of the estate of Balskelly, of which he was in possession; and that, at all events, he was bound to account for these before he could insist in his present demand.

*Answered,*—Even if it were true that the respondents had been thus satisfied, still the purchaser of Newgrange, or the appellant who claims under him, would not be entitled to retain Lamb's share of the price, but must account for it to him, or those standing in his right. The appellant has no pretence to enquire into the management of Balskelly, because the assignations to him by Janet Lamb and Cramond conveyed no more than their interests in the estate of Newgrange. At all events, Newgrange was subject to Lamb's adjudication, as the proportion of the price due to each creditor had been fixed by the decree of ranking and sale, and for this the respondents had an undoubted claim on the estate, which the appellant had no right

1744.  


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 COOPER  
 v.  
 HUNTER, &c.

to contest, on a suggestion that satisfaction had been received out of Lamb's proper estates of Balskelly; that question being competent to Lamb's representatives only.

The Lord Ordinary, Elchies, (27 November, 1741) " Found that the defender (appellant) having no other title to the lands in question than as deriving right from the purchaser at the judicial sale, and as having paid certain of the creditors as they were there ranked,—in which sale the pursuer was also ranked upon his adjudication against Dr. Lamb, for a proportion of the debts due to the doctor out of the said estate ;— that therefore the pursuer cannot in this process, which is for that part of the price for which he was so ranked, be obliged to count and reckon for his intromission with Dr. Lamb's effects, and that the defender has no sufficient title to object that the pursuer's adjudication against Dr. Lamb was satisfied and paid by such intromission."

Some other points were discussed, which need not be noticed, and the Court, upon the report of the Lord Ordinary, found (14 June, 1743) " that it was not competent to the defender, either as purchaser of Newgrange, or in right of the partial conveyance to Janet Lamb's and Captain Cramond's adjudications, to plead that the pursuer was satisfied, and paid off his debts upon Newgrange by intromissions with the rents or price of Balskelly," &c.

Entered 7th  
 Dec. 1743.

The appeal was brought from these interlocutors of the 27th November, 1741, and 14th June, 1743, and others in the cause.

*Pleaded for the Appellant* :—It would be very unjust that the respondent, if he has already re-

ceived payment of his debt, should yet obtain decree and receive a second payment to the prejudice of the appellant, as purchaser not only of the estate, but of two adjudications upon it, the interest of which must be greater or less as the respondent succeeds or fails in his present attempt. Janet Lamb and Captain Cramond, whose right the appellant has acquired, would, without doubt, have been entitled, previous to the assignation, to have insisted upon this objection to the respondent's demand; and therefore, as in all questions relating to this estate, the appellant, by virtue of the assignations, stands in their place, he has the same title which they would have had to insist upon the objection.

*Pleaded for the Respondent (Hunter):\**—It was a condition of Pyper's purchase of Newgrange at the judicial sale, that he should pay the price to the creditors, as they were preferred by the decree of ranking; and until payment is made to the creditors, according to such preferences, their debts and diligences remain real burdens upon the estate. It is not alleged that the appellant or his author had any payment of that share of the price which corresponds to Dr. Lamb's adjudication, and to which the respondent now has right.

The appellant has no right to Dr. Lamb's separate estate. The assignations obtained from Janet Lamb and Cramond carry their interests only in the estate of Newgrange. Their adjudications were expressly reserved in so far as they might affect any other estate belonging to him; so that

\* There are no pleadings for the other respondents, who appear to have been the tenants of the lands.

1744.

COOPER

v.

HUNTER, &c.  
Judgment,  
December 11,  
1744.

the appellant has no title to call the respondent to account for his alleged intromission with the Doctor's separate estate.

After hearing counsel, "it is ordered and adjudged, &c. that so much of the interlocutors complained of, whereby it is found 'That it is not competent to the appellant, in right of the partial conveyances to Janet Lamb's and Captain Cramond's adjudications, to plead that the respondent is satisfied and paid off his debts by intromission with the rents or price of Balskelly;' be and the same is hereby reversed; And it is hereby declared, that it is competent for the appellant in right of the partial conveyances to Janet Lamb's and Captain Cramond's adjudications, to plead that the respondent is satisfied and paid off his debts, by intromissions with the rents or price of Balskelly; and it is hereby farther ordered and adjudged, that the respondent do count and reckon with the appellant for his intromissions with the rent or price of Balskelly, and that the Court of Session do give the proper directions for taking the said account, and for making to all the parties all just allowances therein, and for applying the clear produce of such intromissions towards the satisfaction of the respondent's demands, in such manner as shall be agreeable to justice and the course of the said Court, &c."

For Appellant, *William Murray, C. Erskine.*

For Respondent, *Robert Craigie, A. Hume  
Campbell.*