No 11. only with the exception, that where the debtor was perſonally liable, his moveables behoved to be firſt ſearched for, and poinded, before the lands could be appriſed: And upon this plan it was, that where the debt was illiquid, as where it conſiſted *in obligatione ad factum præſtandum*, it was neceſſary, by a proper proceſs, to liquidate that obligation. But, as the law was ſtill defective, ſo far as no remedy was competent, whereby creditors might recover payment where the debtor was dead, and that the apparent heir did refuſe to acknowledge the ſucceſſion; or where lands had been ſold, but the purchaſer's right not completed; there the Court did ſupply that defect by a remedy, till then unknown; whereby, in the one caſe, they adjudged the *hæreditas jacens* upon the heir's renunciation; and, in the other, did adjudge the particular lands in implement of the diſpoſition. But, wherever the claim was liquid, or ſuch as might be rendered ſo, the only remedy was an appriſing; and, ſince the ſtatute, adjudication; without regard whether the proprietor be perſonally liable or not; and as it is optional to him to give a partial progreſs or not, the whole lands fall to be adjudged, where ſuch partial right is not conſented to; as it is impoſſible to think, that a caſe ſhould occur, where particular lands are affectable for payment of a particular debt; and that no form of proceſs ſhould be competent, whereby to make that payment effectual againſt the lands; and the purſuer knows of no other method but this adjudication. As to the ſecond objection, it was *anſwered*, That however this defence may be competent againſt the effect of the adjudication, when payment comes to be demanded, it is not competent at preſent to ſtay decreet of adjudication, as the eſtate itſelf is here the debtor; beſides, there is no perſon who can repreſent Murdiſton *qua* heir of line; the whole eſtate having been conveyed, partly to the defender *quoad* the lands of Murdiſton, and the remainder by the truſt-diſpoſition.

THE LORDS found, That adjudication upon the act 1672 is not competent in this caſe; there being no conſtitution againſt the defender, upon which a compriſing might have been led before the act. But, upon a reclaiming petition and anſwers, the LORDS found, That adjudication upon the act 1672 was competent in this caſe.

Fol. Dic. v. 3. p. 3. C. Home, No 139. p. 238.

1762. *January* 14.

Mrs BARBARA FARQUHAR *againſt* WILLIAM MOWAT & Co. Merchants in Aberdeen.

No 12.
A perſon adjudging an eſtate, *under ſequeſtration*, not obliged to accept of a part, in terms

WILLIAM MOWAT and company, having ſtopt payment in 1756, they made a ſurrender of their effects to certain truſtees, for behoof of their whole creditors; but ſome of theſe creditors, who were unwilling to accede to the truſt-right, having proceeded to lead adjudications, for attaching the bankrupt's heritable ſubjects, a queſtion aroſe betwixt them and the truſtees, which was determined in

No 12.
of the alternative of the act 1672.

favour of the adjudgers, upon the 25th July 1759, (*See* BANKRUPT, from Faculty Collection, No 193. p. 345.)

In July 1760, the whole ſubjects belonging to William Mowat, were ſequeſtrated upon the application of the truſtees, and a factor was appointed by the Court.

Barbara Farquhar, a creditor to the extent of 2000 merks, having, amongſt others, brought a proceſs of adjudication, the defenders offered to produce a progreſs, in terms of the act 1672; and, after having done ſo, inſiſted upon her chuſing any part ſhe pleaſed; which part, they declared themſelves willing to clear of all incumbrances.

Pleaded for the purſuer: That ſhe was not obliged to make choice of any part, as certain incumbrances lay upon the whole; and that the ſequeſtration muſt be an invincible obſtacle to the method propoſed; in reſpect, that both the bankrupt himſelf, and his truſtees, were thereby diveſted, and the management of his eſtate put into the hands of the Court.

Anſwered: As the truſtees are parties to this proceſs, they will conſent to diſpone ſuch lands as the adjudger ſhall chuſe; and as the ſequeſtration was ſought, for no other reaſon, but the oppoſition made by the purſuer, and a few other creditors, to the general meaſures that were propoſed; ſo it will be removed, ſo ſoon as the purſuer ſhall have made her choice, and proved the rental of the lands.

Replied: The truſt-right was undoubtedly at an end by the ſequeſtration; and as that ſequeſtration was made for the behoof of the whole creditors, it never can be removed, but upon an application from them all. Beſides, there is no proper rental produced. The paper lodged in proceſs, called a rental of Tarby and Colpna, contains nothing but the groſs money rent, and victual rent of theſe eſtates, with the deductions. Whereas, the practice has been, in ſuch caſes, to give in a very particular rental, containing the rent of all the ſeveral farms, and expreſſing the particular parcel, that is to be ſet off for payment of the debt. Nor does this rental mention any thing of the rent of the houſes and lands, in and about the town of Aberdeen; to which, likewiſe, no progreſs has hitherto been produced. In ſhort, the conduct of the defenders, in the management of this proceſs, ſeems to have been calculated for no other purpoſe, than to procure a delay, in order to try what might be done in the way of negociation and compoſition.

THE LORDS decerned in the adjudication of the whole eſtate.

Act. *Burnet.* Alt. *Walter Stewart.*

Fol. Dic. v. 3. p. 3. Fac. Col. No 75. p. 169.

Wight.