

1801. June 17.

COMMON AGENT in the Ranking of the CREDITORS OF DUGALD CAMPBELL of Edderline, against RODERICK MACLEOD.

IN 1792, Lieutenant Allan Cameron, Dugald Campbell of Edderline, and three other persons, granted a bond for £1000 to Roderick Macleod. All the obligants were taken bound jointly as principal debtors.

Lieutenant Cameron's affairs having gone into disorder, Mr. Macleod, in the years 1796 and 1797, recovered £302. 18s. 3½d. of the principal sum from his sequestrated estate.

By this time the affairs of some of the other obligants have also become embarrassed, Mr. Macleod, in 1798, after taking the proper preliminary steps, obtained an adjudication of the estate of Edderline for the whole principal sum contained in the bond, bygone interest, and penalties. Neither the summons of constitution on which the adjudication proceeded, nor the summons of adjudication, took any notice of the partial payments previously recovered from Lieutenant Cameron's estate.

Afterward, in a ranking and sale of the estate of Edderline, the common agent alleged, that there was a *pluris petitio* in Mr. Macleod's adjudication, in as much as it was led for the whole £1000, without deduction of the £302. 18s. 3½d. previously paid; and contended, that the effect of the *pluris petitio* must be to cut off the penalties and accumulations, and thus restrict the effect of the adjudication to a security for the principal, and interest truly due at its date.

To this objection Mr. Macleod

Answered: As all the debtors were bound jointly and severally, it will not be denied that the respondent was entitled to rank on each of their estates for the whole debt, to the effect of drawing full payment. Hence it follows, that he was also entitled to adjudge each of their estates for the whole debt; because without an adjudication a personal creditor cannot rank upon an estate under judicial sale; 16th February 1734, Earls of Loudoun and Glasgow against Lord Ross, (APPENDIX, PART II. *voce* RIGHT IN SECURITY), 21st July 1758, Creditors of Auchinbreck, No. 93. p. 14129.

Replied: After receiving the partial payment, the respondent was entitled to rank for his whole debt on the estate of the other obligants only as a personal creditor. The sum due to him was reduced to £700; and it would be plainly unjust to allow a creditor for that sum, by means of an adjudication, to draw penalties and accumulations corresponding to a debt of £1000; 20th June 1797, Edie and Laird, APPENDIX, PART I. No. 9. p. 22.

The material distinction between this and the cases founded on by the objector, is, that there the partial payment was received after the adjudication; here it was received before it.

### No. 13.

A creditor by bond, in which there were several joint obligants, after receiving a partial payment from the estate of one of them, led an adjudication for the whole debt against the estate of another obligant. This was found to be a *pluris petitio*, and the adjudication was on that account restricted to a security for the balance truly due at its date.

No. 13. The Lords nearly unanimously sustained the objection to the adjudication to the effect craved by the objector.

Lord Ordinary, *Justice-Clerk Rac.*

Alt. *Arch. Campbell, junior.*

R. D.

For the Common Agent, *Boyle.*

Clerk, *Home.*

*Fac. Coll. No. 240. p. 542.*

1805. *December 19.* ALLISONS *against* BALLANTINE.

No. 14.

What is understood by "first adjudication" in the act 33d Geo. III. cap. 74. § 81.

IN a process of ranking of the creditors, and sale of the estate of David Ferguson, merchant in Ayr, an objection was stated by William Ballantine, the common agent, to the interest produced for Mary, Jean, Burrel, and Margaret Allisons, on account of an alleged defect in their adjudication.

David Ferguson's heritable estate was understood, at the time of his death, to consist of two different subjects; but it was afterward discovered, that he had a right to a third subject, in the neighbourhood of Ayr.

The first adjudication against his estate, was obtained at the instance of Messrs. Innes, Beveridge and Company, merchants in London, on the 24th January 1794, and it adjudges lots first and second, for payment of the principal sum, interest and penalty due to them.

The greater part of the creditors also adjudged these two lots. But after the adjudications were led, upon lot third being discovered, it became necessary to lead a new set of adjudications against it.

The first adjudication of lot third that was brought into Court, was at the instance of Mrs. Elizabeth Ferguson, which was, on the 10th December 1794, appointed to be intimated in the usual manner, in terms of the bankrupt-act; and with this adjudication the greater part of the creditors were afterward conjoined.

In order to bring the adjudication led by the Misses Allison within year and day of the first adjudication by Messrs. Innes, Beveridge and Company, which affected lots first and second, they were under the necessity of applying to the Court to dispense with the *inducia* of the second diet of their summons. And as by this time Mrs. Ferguson's adjudication against lot third had also been executed, this subject was also included in their adjudication.

Mrs. Ferguson's summons of adjudication, which was called in Court upon the 10th December 1794, had been intimated in common form; but the twenty days did not expire, so that she could not obtain adjudication against this subject until the 28th January 1795.

Messrs. Innes, Beveridge and Company's adjudication, had been obtained upon the 24th January 1794. Misses Allisons obtained decree of adjudication upon the 24th January 1795; and they not only adjudged the two first subjects contained in the previous adjudication of Messrs. Innes, Beveridge and Company, but they also adjudged lot third, which was not contained in any former decree of adjudication.