

No 22.

craving an incident diligence for proving the value of said superiority; which was granted, and a proof thereof led, and a state thereof prepared for advising.

The Creditors now apply, representing that the scheme of division of the price of the subjects already sold cannot be made out, unless the superiority and feu-duty be also sold, and that new letters of publication would raise a great expense, and craving the Lords would advise the proof summarily, and dispense with new letters of publication.

THE LORDS refused the desire of the petition.

*Fol. Dic. v. 2. p. 296. Kilkerran, (RANKING and SALE.) No 17. p. 476.*

---

SECT. V.

Whether a bankrupt estate may be sold in parcels?

1712. February 22. The CREDITORS of RAMSAY of Laithers, Petitioners.

No 23.  
The roup of a bankrupt estate was permitted to go on, although the sale did not include some lands, of which the rights were dubious.

THE Creditors of Ramsay of Laithers applied to the Lords, representing that their debtor had an heritable right on the lands of Crimon Megget, but had never attained possession, but was always excluded by preferable rights, though he contended they were near paid by their intromissions; yet this being a very dubious uncertain plea, it might hinder the sale of his other uncontroverted property lands, if they were exposed together; therefore craved allowance to leave them out of the roup, lest they should mar the whole, and scare buyers from bidding and offering for the rest. THE LORDS saw the acts of Parliament ordained the bankrupt's whole estate to be roup'd; but thought this could be only understood of his clear liquid and undoubted property, but not of uncertain claims and claspers they might have on other men's estates; and therefore allowed the roup to go on, without including these lands; or else that they might be exposed to sale separately by themselves; where a new difficulty occurred, what price and value could be put on such dubious rights? For it was not to be expected they could sell at eighteen, nineteen, or twenty years purchase, as clear lands did. It has sometimes occurred, that the price set on bankrupt lands as the *minimum quod sic* has been so high, that no buyer could be found to bid the Lords' price, as particularly fell out in the case of Cleland of that Ilk, No 11. p. 13318. where the Lords had set eighteen years purchase, but though frequently exposed, none would come up to the price, the lands

holding of Duke Hamilton, lying within his regality, and subject to other inconveniencies, and upon application of the Creditors, the LORDS altered the price, (which was a great step) and brought it down to sixteen years purchase; and at last Gavin Hamilton the under-clerk of session bought them at that price.

Where a buyer cannot be got, then the act of Parliament ordains the lands to be divided amongst the Creditors, according to their respective preferences on their diligences, and which happened in the case of Bruce of Kennet's Creditors. But such unextricable difficulties arose, that it is not adjusted to this hour; seeing particular rooms will not answer to particular creditors' sums; so they are forced to stay in an involuntary communion, by dividing the rents of the lands, without getting the property ascertained and parcelled out to them, conform to their preferences.

The great difficulties Creditors meet with, is to recover the charter-chest and writs of the lands, to instruct the holding and *reddendo*, and to satisfy a buyer of the sufficiency of the progress; for bankrupts abstract the writs, and lodge them in obscure corners till they make their bargain, and get a sum of money from the Creditors to produce them.

There is not such difficulty in constituting the rental; for the tenants' tacks or oaths do that, unless where it was in the debtor's own hand; for that puts Creditors to prove the sowing and increase, what it might produce if laboured; and if grass, how many soums of cattle it could hold? As to the price such lands may give in that part of the country, the Lords have very justly refused to allow any witnesses to depone upon it, but only landed gentlemen in that shire, what lands of that holding used to give betwixt buyer and seller; and by their testimonies they set a price even somewhat within to encourage bidders; and I have seen it rise three or four years purchase above the standard set by the Lords; and particularly in the lands of Nicolson and Cockburnspath, and many others; and it is rare where bidders will not come up to the Lords price, as happened in the lands of Cleland abovementioned on some special defects in the rights or holding.

*Fol. Dic. v. 2. p. 311. Fountainhall, v. 2. p. 729.*

\* \* In the late ranking of Lord Dundonald's Creditors, and sale of his estate, the wood of the forest of Culross was sold in lots separate from the soil, which was also sold in lots. See APPENDIX. ED.