

No 1.

for liquid sums as a judicial sale; seeing, in this case, it was only for a security, and the legal was never to expire during her life.

THE LORDS sustained Mary Bruce's adjudication, as a security to her, not only for by-gones, but in time coming during her life; and ordained her to come in *pari passu* with Sir Patrick for both. *

Fol. Dic. v. 1. p. 4. President Falconer, No 75. p. 50.

1714. January 27.

JAMES ANDERSON of Stobcorse, and WILLIAM ANDERSON, Merchant in Glasgow,
against WILLIAM GILHAGIE, and HUGH WALLACE of Kenniehill.

No 2.

An adjudication in security, of provisions in a contract of marriage, found to require no previous charge.

JAMES and William Andersons, at whose instance, execution upon William Gilhagie's contract of marriage with Agnes Anderson, was provided to pass against him, for securing 20,000 merks to the said Agnes in life-ferent, and to the children of the marriage in fee; finding the husband to be in a broken condition, raised a summons of adjudication of his lands of Kenniehill, as conveyed, under trust for his behoof, to Hugh Wallace; who, being admitted a contradictor for his interest, *alleged*, That no such adjudication could be decerned, in implement of the contract of marriage, without a previous constitution of the provision; and personal execution, by a charge and denunciation against the husband, as uses to be, in all adjudications on obligations *ad factum prestandum*; even where the fact is specific, or liquid, as an obligation to dispose particular lands or tenements; and much rather where the obligation is general, to employ a certain sum of money, without determining or confining the husband to this or that special subject.

Answered for the pursuer, 1mo, As this process is, at least upon the wife's part, very favourable, and of the nature of *dotalitia actio*; so personal execution against the husband, at the instance of his wife, or trustees in her name, and upon her account, is neither necessary nor becoming; nay, would seem *contra bonorem matrimonii*, and might readily occasion discord betwixt the husband and wife, which law is ever careful to prevent. *2do*, Previous horning, or personal diligence, in order to adjudge, is only necessary in adjudications for implement of dispositions, or the like illiquid facts; whereas, here adjudication is craved for security of a certain liquid debt, which uses to be granted; 2d January 1684, Bruce against Hepburn. (*No 1. b. t.*)—THE LORDS found, That the adjudication might proceed without a

* The same decision is thus mentioned by Lord Fountainhall, v. 1. p. 256.—Sir Patrick Hepburn of Blackcastle against Mary Bruce. *Alleged*, her adjudication is null; in so far as it adjudges, for her current annuity and life-ferent, for all years and terms subsequent to the date of her decree of adjudication, during her lifetime; seeing that is an uncertain event, and nothing can be the ground of an adjudication, but a liquid sum, whereof the terms of payment was past, at the time of the adjudication.—*Answered*, The terms are now past; and she may adjudge lands for security of her life-ferent in time coming, as well as for by-gones.—THE LORDS were divided on this; but at last they sustained the adjudication, even for years to come, as a security of her annuity, for all subsequent years during her lifetime.

previous charge of horning or personal diligence, for employing the 20,000 merks in terms of the contract of marriage.

No 2.

Forbes, MS. p. 18.

1759. February 16.

PATRICK NISBET, Merchant in Glasgow, *against* WALTER STIRLING, Merchant there.

IN 1754, William Stirling, surgeon in Glasgow, executed a bond of provision in favour of his daughter Janet, spouse to Patrick Nisbet, merchant there; whereby he became bound to pay L. 250 Sterling, to her, over and above the tocher formerly contracted with her, and that at the first term of Whitfunday or Martinmas, after the decease of his wife, Elizabeth Murdoch, mother of the said Janet Stirling; and to pay L. 600 Sterling to their other daughter Elifabeth.

Of the same date, William Stirling executed two dispositions, in favour of Walter Stirling, the defender, his only son; the one of his land-estate, and the other of his debts, goods, and effects. These dispositions contained this clause: 'That the said Walter, and the subjects hereby conveyed to him, shall be affected and burdened with the annuities, burdens, and provisions, made and granted, or to be made, granted, and conceived by me, in favour of Elifabeth Murdoch my spouse, and the children procreate betwixt her and me.'

Upon the death of William Stirling, his son Walter succeeded to his whole estate, heritable and moveable, with the burden of his mother's jointure, and the above provisions to his two sisters.

Patrick Nisbet having got right, from his wife, to the said additional provision, insisted, as Walter was a young man of little experience, and had launched out into an extensive trade, the consequences of which were precarious, he should find security for payment of the L. 250, when, upon the mother's death, it should fall due.

The parties having disagreed about the terms of this security, Patrick Nisbet brought a process of constitution against Walter, before the magistrates of Glasgow; concluding, That he should be personally decreed to make payment of the debt against the term of payment; upon which he obtained decret. During the dependence, he also raised inhibition and arrestment against Walter; who thereupon presented a petition to the Court, complaining of these diligences, as oppressive, and hurtful to his credit. The pursuer agreed to pass from his arrestments; but the Court likewise recalled the inhibition.

The pursuer next brought a process of adjudication in security, founded upon his decret of constitution; only superseding execution till the term of payment should arrive. The defender appeared, and *alleged*, That all this was done *in emulationem*; and that an adjudication in security, before the term of pay-

No 3.

Adjudication, in security of a debt *in diem*, refused, in respect no proof was offered that the debtor was *vergens ad insopiam*.