

No 7.

' THE LORDS found it relevant to apply the sum, contained in the receipt, to the payment of black cattle bought by the suspender from the charger, for the use of Sir George Maxwell's parks, within the three years of the date of the receipt; and they found it relevant for the charger to prove, in the terms of his condescendence, *prout de jure*.'

Act. Ro. Dundas.

Alt. Ja. Boswell.

Fcl. Dic. v. i. p. 461. Rem. Dec. v. i. No 5. p. 8.

1724. July 16.

WILLIAM NICOLSON of Glenbervie *against* The LADY TRABROUN.

No 8.

A Lady, infeft in a liferent of lands, consented to an heritable bond, granted by her husband to a creditor, who afterwards adjudged, and drew a partial payment from the purchaser of the lands. Found that this payment must be imputed in extinction, *pro tanto*, of the principal sum in the heritable bond, and not of the accumulations in the adjudication.

THE Lady being infeft in the barony of Trabroun, for a liferent provision, consented to an heritable bond, granted by her husband to the Lord Kemney, for the principal sum of 5500 merks, upon which the Lord Kemney was infeft; whereby he had the preference to the Lady's liferent, and upon which he obtained a decret of pointing the ground against the tenants.

The Lord Kemney was likewise creditor to Trabroun in a sum of L. 416 Scots, by a personal bond; upon which, and the heritable bond, he adjudged the barony of Trabroun, and likewise an interest which Trabroun had upon the estate of Kirkton in Fife, stated and preferred in the ranking and sale of that estate for L. 17,254 Scots; but, because Trabroun was not in such circumstances, as that he could convey his debt and preference to Gillespie, the purchaser of Kirkton, Gillespie raised a multiplepointing against Trabroun's creditors; at discussing of which, Glenbervie, as having right from my Lord Kemney, his father, received of his claims from the purchaser L. 2396 Scots, in virtue of the said preference.

Mr Nicolson insisted thereafter in executing his letters of pointing against the tenants, which being suspended, there arose a question betwixt him and the liferentrix, whether the partial payment, out of the price of Kirkton, ought to be applied in extinction of the accumulated sum in the adjudication, or to the principal sums and annualrents, contained in the respective bonds.

It was *contended* for Mr Nicolson, That adjudications were necessary diligences, and that his was a good one, and laboured under no nullity; that, although the Lords do sometimes restrict adjudications, and, in order to prevent carrying off great estates for small sums, find the legal current upon slight nullities, yet the security always remains good for principal sum, annualrents, and accumulations, and must continue to do so as long as the law introducing that diligence stands unrepealed; and, consequently, the sums contained in the adjudication were due, and the partial payment might be applied by Glenbervie to any of them.

It was *argued* for the Lady, That it was by no means equitable in Glen-

bervie to endeavour to apply the partial payment to the accumulations; at least to apply it so far, as to keep up the principal sum in the heritable bond, and thereby lay the weight of that debt upon the subject of her liferent, especially considering that there was no less a penalty than L. 1000 in the heritable bond, to which he could make the application. *2do*, Though she had consented to the granting of that bond to Kemney, yet that could go no farther than to the yearly annualrent of the principal sum. *3tio*, Upon her renouncing in favour of Kemney, she got an assignation to the claim her husband had upon the estate of Kirkton, out of which the partial payment had been recovered. And, *4to*, That, however unexceptionable Mr Nicolson's adjudication might be, yet the payment ought to be applied to the extinction of the principal sum and annualrents, but not to the accumulations. *1mo*, Because Mr Nicolson had already acquiesced in that method of application, by a writing under his hand, in which he approved a scheme of division amongst the creditors of Trabroun, wherein he is only stated as a creditor for his principal sum and annualrents. *2do*, Because, by a subscribed account in process, (two years after leading the adjudication) my Lord Kemney restricted his heritable bond to principal sum and annualrents, without accumulations.

It was *answered* to Mr Nicolson's having subscribed the scheme of division, That the estate of Kirkton was not sufficient to pay the principal sums that affected it, with their annualrents; for which reason, the creditors agreed that the scheme should be made out, dividing the price in proportion to their principal sums and annualrents, without regard to the accumulations; but from thence it could not be inferred, that any (even of Kirkton's own) creditor did quit or renounce his accumulations, as to the common debtor; for, whatever the creditors might do amongst themselves, to expedite the scheme of division, yet they still stood creditors to the representatives of that estate, for the remainder of the sums which they could not at that time recover.

THE LORDS found, that the partial payment, received out of the price of Kirkton's estate, conform to the scheme of division thereof, signed by Glenbervie, was to be imputed in part payment of the principal sum in the heritable bond, and that the relict's liferent was preferable to the accumulations.

Reporter, Lord Justice Clerk. Act. Jo. Dundas. Alt. Jo. Colvill. Clerk, Mackenzie.  
Edgar, p. 87.

1725. February. DUTCHESS OF BUCCLEUGH *against* PATRICK DOUL.

WILLIAM INNES was appointed chamberlain of the estate of Dalkeith, in the year 1711, by the Dutchess of Buccleugh, who relied upon his personal security for his management. Thereafter, in the year 1714, the Dutchess having purchased the feu duties of Inveresk and Musselburgh, granted a factory to the said William Innes, for uplifting these feu duties; and John DouL became

No 9.

A bankrupt cannot apply an indefinite payment to a debt in which he stands singly bound, in defraud of his cautioners