

No. 12. ron Company against Berry, No. 184. p. 1110; 25th June 1782, Ross against Chalmers, No. 185. p. 1111; 4th July 1783, Young against Grieve, No. 186. p. 1112; 1st March 1791, Creditors of Mackellar against Macmath, No. 190. p. 1114;

Replied: The 33d Geo. III. C. 74. being a correctory statute, must be strictly interpreted; Bankton, B. 1. Tit. I. § 62.; Ersk. B. 4. Tit. I. § 43.; 17th November 1785, Maxwell against Gib, No. 188. p. 1113; 14th January 1789, Richmond against Dalrymple, No. 189. p. 1113. Now, a "personal protection" is the act of a court, and is essentially different from taking refuge in the sanctuary, which is a voluntary act on the part of the debtor. What indeed demonstrates that the Legislature did not mean to include the latter under the general words of "privilege" or, "personal protection," is, that in the 13th clause of the same statute, where the cases in which sequestration may be applied for, are enumerated, "retiring to the Abbey," and the not being "liable to be imprisoned by reason of privilege or personal protection," are contradistinguished.

The Sheriff, before answer, "ordained Thomas White to produce evidence that Morison, the common debtor, was under the diligence of his creditors, "by horning and *caption*, and retired to the sanctuary within sixty days of "William Butter's pouding."

White having died, his executors brought this interlocutor under review by advocacy, in which the Lord Ordinary at first remitted *simpliciter* to the Sheriff; but afterward reported the cause on Informations.

The Court (22d May 1800) "repelled the reasons of advocacy." But, on advising a reclaiming petition, with answers, they, by a considerable majority, and on the grounds pleaded by the pursuer, decerned in terms of the conclusions of Thomas White's libel.

Lord Ordinary, *Cullen*.  
Clerk, *Pringle*.

Act. *G. MacLaurin*,

Alt. *Connell, H. T. Campbell*.

R. D.

*Fac, Coll. No. 197. p. 454.*

1801. *November 24.*

CAMPBELL and Others, posterior Adjudgers, *against* The COMMON AGENT for the Postponed Creditors in the Ranking of the Creditors of CHARLES MACLEAN of Kinlochaline.

No. 13.  
Construction of the clause in the Bankrupt act which relates to conjoining adjudications.

KINLOCHALINE'S affairs having become embarrassed, his creditors proceeded to attach his estate. An adjudication was led at the instance of George Andrew, writer in Edinburgh, in which intimation was, 11th June 1795, given to the other creditors to be conjoined. Decree of adjudication was, 15th December, pronounced in favour of Mr. Andrew, and twelve other creditors were conjoined

with him. Subsequent to this, Henry Butter of Pitlochry executed a summons of adjudication, and brought it regularly into Court. With him David Campbell of Combie, and twenty-four other creditors were conjoined.

To these last, it was objected by the common agent, that the bankrupt act "only authorises intimation to be made, and creditors to be conjoined in the first process of adjudication against any estate\*." The posterior adjudgers, in support of their claim,

Pleaded: It seems consistent with the spirit of the bankrupt acts, that the creditors who have their grounds of debt ready may be conjoined in a posterior adjudication as well as with a first. The bankrupt act 23d Geo. III. § 5. allows this expressly, as it enacts, "that the Lord Ordinary officiating in the Court of Session, before whom any process of adjudication is called, shall ordain intimation thereof to be made in the minute-book, in order that any other creditors of the common debtor, who may think proper to adjudge his estate, and are in readiness for it, may produce the instructions of their debt, and be conjoined in the decree of adjudication; and a reasonable time, not exceeding twenty sederunt days, shall be given for that purpose, unless there be any hazard from a delay, which the Court, or the Lord Ordinary, shall judge of."

Although the present act inserts the word *first* instead of *any* in the former one, it seems to have been only intended to obviate this ambiguity, whether all adjudications are to be intimated, or only the first. But with regard to the meaning of the first adjudication, as the other adjudications, of which it is the first, are not the whole adjudications which may at any time have been brought against an estate, and not even the whole which may have been brought within the years of prescription, it is to be held as the first in relation to those which are conjoined with it: There may thus be many first adjudications against an estate.

The postponed creditors

Answered: After the first adjudication has been intimated, and creditors conjoined with it, the statute does not authorise such a form of proceeding in a subsequent adjudication; but every creditor not conjoined in the first, must

\* The enactment is in these words: "And in order to lessen the number of adjudications for debt, and consequently the expense to all parties, and to facilitate the *pari passu* preference of creditors in similar circumstances, Be it enacted, That the Lord Ordinary officiating in the Court of Session, before whom the first process of adjudication against any estate for payment or security is called, shall order intimation thereof to be made in the minute-book, and on the wall, in order that any other creditors of the common debtor, who, at the next calling of the cause, can show, that although they have not executed their summonses of adjudication, they are in other respects, by the nature of their grounds of debt, and steps taken by them, in condition to proceed in adjudging their debtor's estate, may produce there the instructions of their debts, with summonses of adjudication libelled, and signeted, for the purpose of their being conjoined in the decree of adjudication, twenty sederunt days being allowed for such intimation before the cause can be called a second time; and if any of these forms shall happen to be omitted, the said adjudication shall be null and void, without prejudice to the validity and order of ranking of posterior adjudications, according to the rules of law." Stat. 33d Geo. III. C. 74. § 10.

No. 13. proceed, from the express reservation to that purpose, "according to the rules of law."

At common law, these posterior conjoined adjudications are unquestionably null; and as the introduction of conjunction was an exception from the general rule, the clause of the statute must of course be confined to the special case in which it is authorised. The words of the enactment are most precise; the Lord Ordinary before whom the first adjudication against any estate is called, shall ordain, &c. and the whole applies clearly to the process only; concluding with the express declaration, that posterior adjudications were to be governed by the former rules of law.

The change of expression from *any* to *first* adjudication, shows a deliberate purpose in the Legislature to alter the former practice. If conjunction with a posterior adjudication were allowed, this might be the consequence, that if any adjudication comes to be called when the year and day are nearly expired, and other creditors who could not have brought summonses into Court in time for the *pari passu* preference, should appear desiring to be conjoined, the regular adjudger would thus have the fund for his payment shared with those who had been dilatory, and who could not have drawn any thing but for his adjudication; besides, if it must intimated for twenty days, in order that the conjunction may take place, the year and day might elapse before his decree could be obtained, and he might thus lose the effect of his diligence entirely.

The Lords (17th June) sustained the objection stated to the adjudication of the creditors who were not conjoined in the first adjudication, in the name of George Andrew, but in one or other of the posterior adjudications.

To which judgment, on advising a petition with answers, they (24th November) adhered.

Lord Ordinary, <i>Ankerville.</i>	For the posterior Adjudgers, <i>Solicitor-General Blair,</i>
<i>Niel Fergusson.</i>	Agent, <i>Wm. Macdonald, W. S.</i>
Agent, <i>K. Mackenzie.</i>	Alt. <i>M. Ross, G. J. Bell.</i>
	Clerk, <i>Menzies.</i>

F.

*Fac. Coll. No. 4. p. 8.*

1802. February 6. EWING'S Creditors against DOUGLAS'S Attorney.

No. 14.

A Scotsman living and carrying on trade abroad does not fall under the Bankruptact.

HUGH DOUGLAS, originally a native of Scotland, had long carried on business in Demerara, from which he returned in November 1800 to Glasgow, where he resided for two or three months, settling some of his accounts, and arranging his future correspondence. In February, he again returned to Demerara, where the business, during this visit to Scotland, had been continued. A sequestration against him was applied for at the instance of the trustee for the creditors of William Ewing, to whom he was indebted. He was cited, being abroad, at the market-cross of Edinburgh, pier and shore of Leith: And Lord