

1749. December 12. AGNES GORDON, Lady CARLETON *against* The CREDITORS.

AGNES GORDON, relict of Nathaniel Gordon of Carleton, was infeft for security of her liferent in certain lands; but Alexander Gordon of Carleton, her son, being involved in debts, on some of which inhibitions had been used, she concurred in his selling them, the purchaser being taken bound to pay or apply the price for payment of the debts; and Carleton granted her an obligation of the same date, for a liferent annuity out of his other lands, but in which she was never infeft.

The purchaser adjudged in implement, and the creditors adjudged, partly prior and partly posterior to him; and, in the ranking, he was preferred to the property of the lands purchased, paying the price, and made payments to some of the creditors, who, besides their adjudications, had arrested in his hand.

The Lady was confirmed executor-creditor to her son, for her annuity, and gave up part of the price still unpaid; and the creditors competing with her therefor, the LORD ORDINARY, 18th July, 'found that the relict, notwithstanding her consent to the sale of the lands, whereby the purchaser was rendered secure against her liferent-right, remained creditor to her son in the warrandice of the remunerating provision made by him to her, on account of her consenting to the sale, and the personal obligation therein contained; and found that she had habilely affected, by her confirmation as executrix creditor, the balance of the price remaining in the hands of the purchaser; and that the creditors, whose adjudications were not led till after the seller was denuded, and the purchaser's title completed, were not entitled to compete with her diligence for the said balance remaining due of the price.'

*Pleaded* in a reclaiming bill; The Lady who consented to the sale, that the price might be applied to the payment of debts, ought to be repelled by a personal objection from competing upon it with the creditors.

The creditors inhibiting were preferable upon the lands; and having allowed the purchaser to be preferred, on paying the price, have right to it, as come in place of the subject of their payment.

*Answered*; The Lady's consent was only upon condition of her being secured in another way; which not having been done, as no infeftment was given her, it cannot be obtruded against her; and the creditors, who have by means thereof got payment of the greatest part of the price, are rather *in mala fide* to oppose her recovering this pittance.

THE LORDS, 30th November, adhered on bill and answers; and this day refused a bill, and adhered.

Act. T. Hay.

Alt. Lockhart.

Clerk, Kirkpatrick.

Fol. Dic. v. 4. p. 12. D. Falconer, v. 2. No 109. p. 124.

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A liferentrix having consented to a sale of her liferent lands, that the price might be applied for payment of debts, the heir not having secured her in the remuneratory provision agreed to be granted her therefor, she affected the price; and it was found she might compete thereon with the creditors.