

No. 3. law was in every respect equal to a voluntary assignment, the assignee was as well intitled to have the transfer entered in his own name, in the one case as in the other.

3tio, If the Court was to deny effect to the legal diligence of creditors upon a subject of this description, the most iniquitous consequences might follow. The most notorious bankrupt had nothing more to do than to vest his effects in bank stock, and set his creditors at defiance. Expediency might suggest the propriety of not subjecting stock to arrestment, on account of the distraction the affairs of the company might sustain by a multiplicity of arrestments, forthcomings, &c. whenever any of their members became insolvent; but it could not possibly be intended that every other species of diligence should be precluded.

The Court pronounced the following judgment: " Find the letters orderly proceeded upon the charger's conveying to the suspender the bank shares which belonged to the deceased Adam Fairholm, the common debtor, with such diligence as they have used to affect the same, and with warrandice from fact and deed; and find, that in consequence thereof, the chargers are bound to receive the suspender or his assignee as in Adam Fairholm's place, with regard to the said shares, in the same manner as they are in use to do in other sales or transactions of their stock."

Lord Ordinary, *Pitfour*.
Clerk, *Home*.

For the Royal Bank, *Macqueen*.
For Fairholm, *Lockhart*.

R. H.

Fac. Coll. No. 20. p. 46.

1770. July 25.

JOHN THAIN, Advocate in ABERDEEN, *against* Sir WILLIAM MONCRIEF of Moncrief

No. 4.
Process of adjudication cannot be stopped or delayed by a multiplepounding raised by the debtor, doubly distressed for the debt adjudged for.

Thain having led an adjudication against Sir William Moncrief for a debt which was a real burden upon the estate, Sir William objected, that as he was distressed by other creditors claiming the same debt, who had used arrestments in his hands, the adjudication either should not be allowed to proceed, or that procedure therein should be sisted till the issue of a multiplepounding he had brought into Court; in order that, by having it ascertained who had best right to the debt, he might pay with safety.

This was opposed by the adjudger; who alleged it would be a novelty in the practice of the Court to stop a decree of adjudication, on the pretence of third parties having a better right than the person vested in the debt on which the adjudication was demanded; and referred to the Dictionary of Decisions, *voce* ADJUDICATION, 15th Nov. 1666, Cheyne *contra* Christie. No. 7. p. 192.

19th March 1707, Buchanan *contra* Marquis of Montrose, No. 11. p. 196.
 16th Dec. 1707, Tod *contra* Scott, No. 4. p. 190.

No. 4.

The Lord Ordinary decreed in the adjudication; and upon advising two reclaiming petitions with answers, the Judges were of opinion that nothing could stop or delay an adjudication but consignment of the debt; and therefore they "adhered to the interlocutors reclaimed against, reserving all exceptions *contra executionem*."

Lord Ordinary, *Hales*.
 Clerk, *Ross*.

For Thain, *Rolland*.
 For Moncrief, *J. Douglas*.

R. H.

Fac. Coll. No. 36. p. 99.

1771. July 31.

EDWARD TYSON, Merchant in LONDON, *against* ALEXANDER CUNNINGHAME,
 Clerk to the Signet:

Helen Fleming, in the year 1754, with consent of George Dunbar her husband, disposed the lands of Poleark and Granges to John Dunbar her son; reserving her own liferent, and under the burden of certain provisions to her three daughters, Alison, Elisabeth, and Helen. Helen Fleming and her husband died in 1768. John the son had been engaged in trade abroad, and had contracted a large debt to John Watson of London, to which Edward Tyson came to have right as executor to Watson's children. John survived his parents but a few months: The fee of the above lands opened to his two sisters Elisabeth and Helen, to whom also Alison's provision had accresced by her pre-deceasing her mother.

No. 5.
 Effect in a ranking of objections to an adjudication.

These two ladies, instead of entering heirs, brought a sale of the lands as apparent heirs to their mother and brother; and at the same time assigned to Alexander Cunninghame, as trustee, the sums to which they had been provided by their mother's disposition, including the provision to their sister Alison, deceased.

Upon this trust-assignment Cunninghame charged Elisabeth and Helen to enter heirs in general to their mother and brother. Upon their renouncing, he obtained decree *cognitionis causa*, and thereafter decree of adjudication, for the whole principal sums due to them, with the annualrents, and a fifth part more of liquidate penalty.

Tyson having appeared in the ranking as a creditor of John Dunbar's, a state was made out; in which Janet Fleming, sister and a prior creditor of Helen's, was preferred *primo loco*; Cunninghame for the accumulate sum in his adjudication, *secundo loco*; and Tyson upon his debt, for which also he had adjudged, *tertio et ultimo loco*.