

APPENDIX.

PART I.

RANKING AND SALE.

1777. *February 14.*

LIEUTENANT COLONEL DOUGLAS of Hurkledale, *against* DAVID DICKSON of Lockerwood.

IN 1770 Colonel Douglas purchased the lands of Hurkledale and others, at the judicial sale thereof, for the price of £6310 Sterling, and found caution for the payment of the same. Mr. Dickson, one of the creditors to the amount of £1188. 5s. applied to the Court for an act and warrant upon the purchaser for payment of his debt, which application was granted upon his finding caution to repeat and pay back to the rest of the creditors the extent of any deficiency that might in any event whatever affect his debt.

A bond of caution having accordingly been lodged in these terms, Lord Hailes the Ordinary, to whom this question had been remitted by the Court, ordained Colonel Douglas to make payment of Mr. Dickson's debt, out of the price of the lands of Hurkledale. Colonel Douglas petitioned the Court against this interlocutor, and contended, that no purchaser at a judicial sale can be obliged to pay any part of a price, until it is ascertained by a regular scheme of division, what proportion of such price each creditor is entitled to draw. That although in many cases the Court had allowed an interim payment, to a creditor clearly preferable to the rest, and where the purchaser himself had no objections, yet, that when the purchaser is able to state any reasonable objection, and can shew that his interest may thereby be hurt in any degree, such payment ought not to be ordered. For, if once the principal creditors have obtained such warrants, it may depend upon a few postponed creditors, who may have no interest in the event, whether a scheme of division is ever at all made up; by which means, the whole debts of the bankrupt may continue a real

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Particulars of
the case
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referred to.

No. 1. burden on the lands for many years, during all which time the purchaser must be disabled from either selling, impignoring them, or giving security upon them, however much his affairs may require it. That these hardships were particularly applicable to the present case, where the purchaser's own funds were not sufficient for paying the whole price; and it is out of his power to raise any money by heritable security upon the lands themselves for that purpose. If, therefore, the creditors were allowed to obtain acts and warrants for their payment, his interest would be very much injured.

It was answered by the creditor, that a scheme of division was not necessary to secure the purchaser's right. For an act and warrant from the Court for the payment of any creditor was just as good and sufficient an exoneration to the purchaser *pro tanto* of the sum paid, as the most formal scheme and decret of division possibly could be. Neither could his interest be thereby affected. For if he had occasion to borrow money, an assignment of the debt, paid upon the warrant of the Court, would afford better security for a loan than an infeftment upon the lands.

The Court, considering that by the late act of parliament 1695, C. 6. a purchaser may be exonerated, and may receive up his bond of caution, upon consignation of the price; in respect the purchaser had not offered to consign the price in terms of that act of parliament, refused the petition, and authorized the warrant granted by the Lord Ordinary.

Lord Ordinary, *Hailes.*

Actor, *Wight.*

Alt. *D. Armstrong.*

D. C.

1777. June 27.

WILLIAM CHARLES CRAIGIE, and JOHN WALKER, *against* WILLIAM DOUGLAS.

No. 2.
Extent and effect of the common debtor's interest in the reversion.

THE family of Douglas of Dornock having been for a long time involved in debt to a large amount, the estate came to be sequestrated in 1756, and a process of ranking and sale was brought in 1758. The ranking being concluded, interests were produced and sustained to such an amount, besides a large sum of unranked debts, that they were thought far to exceed the value of the estate, the proven value being only £14000 Sterling, while the ranked debts alone amounted to £26000.

In this situation of affairs, the estate being considered as totally bankrupt, no reversion was expected. Mr. William Alexander, merchant in Edinburgh, however, coming to hear of the desperate situation of Dornock's affairs, and it being observed to him that if Dornock had the command of money, something might be done with his creditors for him, a private agreement was accordingly