

sale, it might then be determined, whether the pursuers, who had raised the first action, and were *in cursu* of supplying the defect thereof, were entitled to claim from them the management of the process; but at present they behaved to determine the cause as it lay before them.

THE LORDS found that the action could not be proceeded in.

Reporter, *Drummore.*

Act. *Lockhart & Brown.*
Clerk, *Justice.*

Alt. *H. Home & J. Grant.*

D. Falconer, v. 2. No 39. p. 36.

No 49.

1750. July —.

CRAWFURD, Petitioner.

COCHRAN of Ravelrig, as creditor to the deceased Laurence Crawford of Jordanhill, brought a ranking and sale of the estate of Jordanhill, wherein his son, Mr John Crawford of Jordanhill, was called and compearing. After the sale had come so far, that the lands were exposed to roup, and bought by William M'Dowal of Castlesempil, but the sale not yet approved, Mr John Crawford applied by petition for having the sale set aside, on this ground, that the whole of the common debtor's estate had not been valued, particularly, the superiority of the lands of Garbraid, which pay L. 5 Scots yearly of feu-duty; that although the same was contained in the summons of sale, and that the pursuer of the sale had sought and obtained a diligence for recovering the writs of the said lands, yet no notice was taken thereof, neither in the proved rental, act of roup, nor letters of publication.

THE LORDS, without requiring an answer, refused the petition, in respect the petitioner had been called and compearing in the sale.

There was no reasoning upon it. The interlocutor passed as a matter of course and a new proof was granted of the value of that separate subject.

Fol. Dic. v. 4. p. 211. Kilkerran, (RANKING and SALE.) No 13. p. 474.

No 50.

A sale approved, tho' the whole of the common debtor's estate had not been valued.

1784. December 25. MACPHERSON against TOD.

THE lands of Benchar, wadsetted more than a century before by the family of Borlum, had been included in the adjudications led against the present Borlum. They were likewise mentioned as belonging to him in the action brought for selling his estate. No proof, however, of their value was taken, and they were altogether disregarded in the subsequent proceedings.

After the other lands had been advertised for sale, Marjory Macpherson, one of the creditors, applied to the Court, by petition, insisting, that the reversionary right of the lands of Benchar should be sold at the same time with the other estate of the debtor. In this she was opposed, by the superior of these

No 51.

Ranking and sale must comprehend the whole estate of the debtor.

No 51.

lands claiming the reversion, in virtue of a quinquennial retour; by the wad-setter, who claimed the property, in consequence of certain adjudications said to be fortified by the long prescription; and by William Tod, the pursuer of the action of sale, who *contended*, That the reversion of these lands appeared to belong to the heirs of line of the family of Borlum, in exclusion of the common debtor, who was the heir-male. But the LORDS found, "That the sale could not proceed until it was determined whether the lands of Benchar, or the reversion thereof, did belong to the common debtor." In a reclaiming petition for William Tod, it was

Pleaded; The rule, that a judicious sale must include the debtor's whole estate, can only hold with regard to his undisputed property, 22d February 1712, Creditors of Ramsay supplicants, No 23. p. 13326. To expose to sale, in its unascertained state, a disputable matter or claim competent to him, would tend to depreciate it, and so hurt his interest. On the other hand, to compel his creditors, though unacquainted with the nature of his rights, and not possessed of his title-deeds, to bring those claims to a conclusion, so as to derive from them of an adequate price, would be equally prejudicial to them. Such certainly would be the consequences of obliging the creditors to discuss their debtor's right to this reversion, relinquished as it has been by him and his predecessors for a century past, and now claimed by a variety of competitors to some of whom, after a tedious litigation, and an expense perhaps equal to the whole accessible funds of the bankrupt, it may be ultimately found to belong.

These arguments had no weight with the Court. The pursuers of a judicial sale, it was observed, were not obliged indiscriminately to follow out every claim suggested to them by the debtor himself, or his creditors. But where an estimate had been comprehended in the adjudications led by the creditors themselves, and enumerated in the action of sale, as belonging to the debtor, it was incumbent on them, either to bring it to a sale with the other lands, or to show, in the clearest manner, that it did not in truth belong to him.

THE LORDS refused the petition without answers.

Lord Ordinary, *Hales*.

For the Pursuer, *Tait*.

For Marjory Macpherson, *Macintosh, Elphinston*.

Clerk, *Menzies*

C.

Fol. Dic. v. 4. p. 212. Fac. Col. No 189. p. 297

See No 25. p. 13326.