

No 92. THE LORDS repelled the defences proponed for Janet Schaw, and found her liable, *in valorem*, of the subject disponed to her by Mr. M'Micken her first husband.

*Fol. Dic. v. 1. p. 372. Forbes, MS. p. 75.*

No 93.

1737. November 11. SMITH *against* SMITH.

A DEBTOR *oberatus* having disponed his estate to certain trustees for the use and behoof of his creditors, with power to them to sell and dispose upon the same, and to divide the price among the creditors; the trustees accordingly entered upon the management with consent of the whole creditors, were infeft, and found a purchaser for the lands. After the purchaser was infeft, but before the price was distributed, one of the creditors dying, the question occurred betwixt the heir and executor, which of them had right to his debt, which was a personal bond bearing interest. It was doubted whether infeftment granted to trustees, though accepted of by the creditors, had the same operation as if granted to the creditors directly. But the LORDS took it upon a ground less disputable: They found the price moveable, the same having been with the creditor's consent; after which there remained nothing but a personal obligation upon the purchaser to pay the price in the same manner as if the estate had been disponed directly to the creditors, and they had sold the same. See APPENDIX.

*Fol. Dic. v. 1. p. 372.*

1796. December 14.

ROBERT HENDERSON *against* WILLIAM STEWART and THOMAS HENDERSON.

No 94.  
The production of a personal ground of debt, in a ranking and sale, does not make the debt heritable, nor liable to be affected by an inhibition.

IN the ranking of Thornywhat and Castlemains, John Ferguson, a personal creditor, produced his grounds of debt, and was ranked accordingly in the scheme of division.

After the estate was sold, but before the price was paid by the purchaser, or a decree of ranking pronounced, Robert Henderson, one of Ferguson's creditors, executed an inhibition against him, and also an arrestment in the hands of the purchaser, upon the idea of his being debtor to Ferguson.

Ferguson afterwards assigned his grounds of debt and interest in the price of Thornywhat and Castlemains, to William Stewart and Thomas Henderson, two of his creditors, who led an adjudication in his right; and a multiple-poining having been raised in name of the purchaser, in order to ascertain the interests of Ferguson's creditors, the Lord Ordinary preferred the assignees. Upon advising a reclaiming petition, the Court adhered to his interlocutor, in

so far as it denied effect to the arrestment ; but remitted to his Lordship to hear parties on the effect of the inhibition.

The LORD ORDINARY ' found, that the inhibition in this case can have no effect ;' and therefore adhered to his former interlocutor.

In a reclaiming petition, Robert Henderson

*Pleaded ;* It being now established, that Ferguson's interest in the funds *in medio* cannot be attached by arrestment, it must follow, that it may be carried by adjudication, and consequently the inhibition, which is a competent mode of diligence, wherever the subject may be carried by adjudication, (15th June 1750, Scott against Coutts and others, *voce* INHIBITION,) must be sustained. Indeed an adjudication is necessary, before the creditors can draw their dividends ; and although, by the present law, the sale may precede the ranking, the summons of ranking and sale is virtually an adjudication for all concerned, as the process proceeds upon the supposition that the creditors have already adjudged ; Stair, b. 4. tit. 36. § 2 ; act 1681, cap. 17 ; Act Sed. 31st March 1685 ; acts 1690, cap. 20, and 1695, cap. 6 ; Act Sed. 23d Nov. 1711 ; see also 30th Nov. 1779, Bland-Gardner against Spalding, No 59. p. 730 ; and the production of the grounds of debt is considered as a requisition to have the benefit of it.

*Answered ;* Before a decree of ranking is pronounced, the purchaser is debtor for the price, not to the creditors, but to the bankrupt himself. The petitioner's arrestment was set aside, because it was not used in the hands of the proper party, not because it was in itself incompetent.

The summons of sale, and the production of the grounds of debt, make no alteration on the nature of the debt, either as to succession or diligence. At the date of the assignation, Ferguson's debt was moveable, and there was no right in him which could be carried by adjudication, or which, consequently, could be affected by the inhibition. Indeed, the admitted necessity of an adjudication, before any part of the fund *in medio* could be drawn in his right, of itself establishes the personal nature of his debt.

Upon advising a reclaiming petition with answers, the LORDS unanimously ' adhered.'

Lord Ordinary, *Metboen.*  
Alt. *Honyman.*

For Ro. Henderson, *Corbet.*  
Clerk, *Pringle.*

D. D

*Fac. Col. No 7. p. 17.*