

No. 50. But the trustee in a family-settlement is in a different situation. It is his duty to manage the affairs of his deceased friend *bona fide*, and in a rational manner; like him, while not interpellated by legal diligence, he may reduce effects into money, and discharge demands as they occur. Were it otherwise, no person would undertake an office of that nature; 8th February, 1710, Rankine against Johnston, *voce* TUTOR AND PUPIL.

The trustees in the present case acted *optima fide*; and as they might have sold the subjects to make the payments objected to, they must be indemnified for the obligations undertaken to prevent a sale at a disadvantage, nor are they obliged to denude till they are so.

Answered: When the trustees borrowed the money for which they are now demanding a preference, they were not ignorant of the existence of this debt, and that payment of it had been demanded. The trust gives them no powers, nor were they in *bona fide* to prefer one creditor to another. They can be in no better situation than the creditors to whom they have made payment; and having done no diligence, they must be postponed.

The Lord Ordinary had preferred the trustees only for payments made in discharging interest upon the whole debts prior to the sequestration, to the extent of the rents, and in discharging certain privileged debts, but not for the money expended in extinguishing the personal debts of the Earl. But, upon advising a reclaiming petition, with answers, the Court (5th December, 1792) approved of the order of ranking produced by the common agent, according to which they were preferred even for the latter.

And upon advising a second reclaiming petition and answers, it was

Observed on the Bench: The trustees in a family-settlement need not raise a multiplepoinding, but, like the heir, may pay *primo venienti*, until legally interpellated.

The Lords "adhered."

Lord Ordinary, *Monbodo*.

For Mr. Alison, *G. Buchan Hepburn*.

For the Trustees, *George Fergusson*.

Clerk, *Menzies*.

D. D.

Fac. Coll. No. 17. p. 35.

1793. March 8. YORK-BUILDINGS COMPANY against MACKENZIE.

No. 51.

The Lords found, That a trustee for creditors was under no disability to purchase the debtor's lands at a judicial sale.

But this decision was reversed on appeal.

* * * This case is No. 54. p. 13367. *voce* RANKING AND SALE.