No 49.

THE LORDS over-ruled the firſt objection, but ſuſtained the ſecond. And Found, "That the days of the ſpecial charge uſed by Douglas, Heron, and Company, not being yet expired, they were not entitled to be conjoined in the adjudication led by Dunmore and Company."

Reporter, *Rockville.* For Dunmore and Company, *Honyman.* For Douglas, Heron, and Company, *Blair.* Clerk, *Colquhoun.*

Fol. Dic. v. 3. p. 15. Fac. Col. No 188. p. 296.

Craigie.

1794. *June* 17.

The CREDITORS of Alexander Hay *againſt* JAMES FLEMING.

No 50.
23 Geo. III. c. 18. § 5. Objection to the intereſt of a creditor who had been conjoined in a proceſs of adjudication, that he had produced, as his grounds of debt, a copy of a bill, and notorial proteſt taken on it, but not the original bill itſelf, ſuſtained, although all objections were reſerved *contra executionem.*

ALEXANDER HAY, merchant in Canada, became bankrupt in 1786. In ſummer 1787, an adjudication was led againſt his eſtate in Scotland. When, a year from its date was almoſt expired, the attorney of James Fleming, merchant in London, craved to be conjoined in a ſubſequent adjudication then brought; and produced, as his grounds of debt, a copy of a bill, a notorial proteſt taken on it in London, the account atteſted by the debtor in payment of which the bill was granted, and an affidavit on the verity of the debt made before a magiſtrate. The bill itſelf had been ſent abroad, in hopes of procuring payment. A decree of adjudication was accordingly obtained, in which all objections were reſerved *contra executionem.*

The bill itſelf was afterwards produced.

In the ranking of Hay's creditors, it was

Objected to this intereſt: *1mo*, The 23 Geo. III. c. 18. § 5. gives the privilege of being conjoined only to ſuch creditors 'as are in readineſs for it, and produce 'the inſtructions of their debts.' Fleming did not come under this deſcription, a copy of an alleged bill not being a legal inſtruction of a debt.

2do, Although Fleming had led a ſeparate adjudication on the grounds of debt produced, the objection would have been equally ſtrong at common law. It is a ſettled point, that an adjudication can proceed only upon a decree of conſtitution, or a liquid written ground of debt. Fleming had neither to produce. The object of reſerving objections *contra executionem*, is not to enable creditors whoſe debts are not legally inſtructed to lead adjudications, but merely to give time for diſcuſſing thoſe exceptions againſt a voucher *ex facie* valid, which cannot be inſtantly verified; Fol. Dic. v. 1. p. 11.; 7th March 1794, Creditors of Neil Macneil againſt Saddler; p. 122. v. 1. of this Dictionary.

Anſwered: It was the object of the act of Parliament to give the privilege of being conjoined to all creditors, who, had there not been danger from delay, might effectually have led ſeparate adjudications. The claimant might have done ſo in

the preſent caſe. The reſervation of all objections *contra executionem* in the adjudication, muſt have the effect of preventing any objection which can be afterwards removed from hurting the diligence. There is no good reaſon for diſtinguiſhing the preſent from an objection which affects the amount of the debt. The Court have ſuſtained adjudications led upon grounds much more exceptionable, as upon expired bills, and upon Engliſh and York-buildings Company bonds, after the lapſe of the long preſcription, allowing theſe objections to be removed by ſubſequent productions. No 50.

THE LORD ORDINARY ſuſtained the objection, in reſpect "that by the clauſe of the ſtatute, in virtue of which the reſpondent (Fleming) claimed to be conjoined in the adjudication, and was conjoined, reſerving all objections *contra executionem*, the creditors only who are in readineſs, and have their grounds of debt to produce can be effectually conjoined."

On adviſing a reclaiming petition and anſwers, it was

Obſerved on the Bench: An adjudication can proceed only upon a decree of conſtitution, or a liquid document. The copy and proteſt ſhow that the bill once exiſted, but not that it is reſting owing. The caſe may be hard, but this can have no weight in a queſtion among creditors.

THE LORDS unanimouſly adhered, by two conſecutive interlocutors.

Lord Ordinary, *Dreghorn.* For the Creditors, *M. Roſs.* Alt. *Maconochie.*
Clerk, *Menzies.*

Fol. Dic. v. 3. *p.* 15. *Fac. Col. No* 125. *p.* 281.

Douglas.

1734. *November* 19. ALEXANDER JACKSON *againſt* DRUMMOND of Gardrum.

No 51.
Ranking of adjudication of perſonal bonds, ſecluding executors.

THE *pari paſſu* preference introduced by the act of Parliament 1661, takes place in adjudications of perſonal bonds for ſums of money, heritable by the clauſe ſecluding executors.

Fol. Dic. v. 1. *p.* 19.

See the caſe STEWART *againſt* STEWART, p. 140. v. 1. of this Dictionary, with reſpect to the mode of ranking of an heritable, not clothed with infeftment. Compare with *No* 13. *ſupra, p.* 242.

IN the competition the Ducheſs of Argyle with M'Neil of Loſſet, mentioned p. 209. v. 1. of this Dictionary, ſeveral charges againſt the ſuperior having been given on one day, upon different adjudications, without expreſſing the time or