

1776. July 2. ARCHIBALD GILCHRIST, Petitioner.

ON a bill accepted by Gray and Crawford his wife, Gilchrist obtained decret of adjudication of subjects belonging to both. The decret was pronounced in December 1775, and, *quoad* the husband, it became final,—but, as to the wife, was kept open by representations, on the footing, that no execution could pass upon a bill granted by a wife *stante matrimonio*; and, as to her heritable subjects, she had, in truth, disposed them away to a sister, who appeared and craved to have them struck out of the adjudication. By this means, the dispute with the wife and her sister continued till 5th March 1776; before which time, the husband was dead, and more than sixty days had elapsed since pronouncing the decret of adjudication against his subjects, in December 1775.

Gilchrist petitioned the Court, setting forth the fact, and praying a remit to the Lord Ordinary who pronounced the decret, to sign the abbreviate, and for authority to the clerk to record it. Both of which the Lords granted.

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GILCHRIST *against* LANG.

LANG, creditor to Gilchrist, by an heritable bond, raised an adjudication against his estate; which being called in common form, a day was assigned him to produce a progress, *viz.* 12th November 1776. On the 26th of October, Gilchrist, under form of instrument, made him an offer of his principal sum, expenses of infertment, expenses of process to that date, and interest of his principal sum, to Martinmas 1776, in regard it was betwixt terms; but Lang refused, and insisted for a decret of adjudication; and accordingly, when the 12th November came, he extracted his act, and before the Ordinary on the Acts obtained circumduction and a decerniture in common form. Finding that the Ordinary on the Acts was exauctorate, and could give him no relief, Gilchrist applied, by petition, to the Inner-house.

The Lords expressed displeasure at Lang's procedure,—Found that he was bound to accept of his principal sum, contained in the bond sued for, with the legal interest thereon, at Martinmas last, and expenses of infertment, together with the expenses of this process to the 26th of October last; and, upon receipt thereof, to discharge the said heritable bond, and all competent thereon: Therefore, upon payment being made, as aforesaid, they prohibited the fore-said decret of adjudication to be extracted, and found the respondent, Lang, liable in the expense of the petition; which they modified to £3 sterling.