

import the LORDS' inclination to supply the defect, and sustain it, though they did not directly decide it.

No 56.

On a bill given in by the other creditors, the LORDS retracted, and found they would not, even *periculo petentis*, allow the adjudication to go for that part of the debt, whereof the term of payment was not yet come, but only for what was already elapsed.

Fol. Dic. v. 1. p. 540. Fountainhall, v. 2. p. 61.

1711. July 14.

Mr ROBERT BLAW.

IN a case of Mr Robert Blaw, schoolmaster, it was stated, if a creditor, in a bond, whereof the term of payment was suspended till after the debtor's death, might raise adjudication of the debtor's lands for security of his money, superseding execution till the term of payment were come and bygone. It being *objected*, that the diligence was preposterous, especially being the first adjudication, and this was to waken and alarm all his creditors to fall upon him at once; it was *answered*, That arrestment and inhibition might be served on conditional debts, or bonds payable *in diem*, and why not an adjudication? And it has been permitted on clauses of warrandice and relief before distress, and to widows adjudging for the bygones of their jointures and life-rent, and likewise for years in time coming, though it only falls annually due; as was sustained to Robert Burnet against Veitch of Dawick, No 53. p. 2121. And Sir George Mackenzie, in his observations on the act of bankruptss 1621, thinks diligence may proceed on such debts, not for present execution, but yet for securing the debt. *Replied*, This would disappoint the very end of suspending my term of payment, which was to free me of any trouble; and if you have taken it in these terms, you must bide your day; and as you cannot point before the term, so neither can you adjudge; for what the one is in moveables, the other is in heritage, and so *pari jure censentur*. THE LORDS thought there could not be one general rule for this case. Where there was no hazard of dilapidation it was not to be allowed; but here it was expressly informed that the debtor was *vergens ad inopiam*, and his circumstances much worse than when he gave the bond; therefore, they remitted to the Ordinary to take what evidences he could get of his condition; and if he found it dubious, then to adjudge, unless the debtor offered sufficient caution to pay the debt when the term of payment should come; on which offer the adjudication was to stop, even as arrestments laid on upon bonds, whereof the term is not come, whether as the ground of arrestment or the debt arrested, may be loosed upon caution.

Fol. Dic. v. 1. p. 540. Fountainhall, v. 2. p. 659.

No 57.

When the term of payment is suspended till after the debtor's death, adjudication cannot pass unless on special cause shown, viz. *vergens ad inopiam*.

*** See Forbes's report of this case, *voce* PROVISION TO HEIRS and CHILDREN.