

No 13.

claims? If the pursuer has a just claim, it were indeed hard to cut him off; but has not the law provided him a remedy? May he not insist, as accords, against the creditors who brought the estate to a sale, and who received the price, and who consequently are *locupletiores ejus jactura*? Surely it would be severe, above measure, upon the purchaser, to make him liable, who, relying upon the public faith, made a fair and open purchase, as the highest bidder, at a public roup, who has paid the utmost farthing of the price, and who was none of the creditors, made no compositions, nor got eases to the value of a sixpence.

“THE LORDS found the decret of sale was a sufficient production made for the purchaser, to exclude the pursuer’s title.”

Dalrymple, No 182. p. 250.

1724. December 29.

MR PATRICK HALDANE of Beacrofts, Advocate, *against* SIR ALEXANDER ANSTRUTHER and his CREDITORS.

No 14.

In what light adjudications of an old date, but where the expiry of the legal had not been declared, are to be considered as a title?

THE defender’s lady, by virtue of a factory from him, entered into a minute of sale, whereby she sold to the pursuer, at 32 years purchase, the lands of Newgrange, and obliged the defender to grant a disposition and progress of rights thereto.

The defender, Sir Alexander, having become bankrupt, his Creditors arrested the price; and a disposition and progress being offered by Sir Alexander to the pursuer, he raised a multiplepinding, calling Sir Alexander and his Creditors, and repeated a reduction of the minute, founded on the following objections to the progress.

1^{mo}, That the foundation of Sir Alexander’s right, upon which his author was infest, being no other than certain apprisings led against William Carstairs of Kilconquhar, former heritor of Newgrange, by his creditors, upon which no declarator of extinction of the legal had followed, and the reversion was only renounced by the apparent heir who never entered, the same was liable to challenge at the instance of any subsequent heir, who might enter to the predecessor against whom the apprisings had been led; and Sir Alexander being now bankrupt, the pursuer could not depend on his warrandice; 7th July 1676, Edgar against Miln, No 4. p. 285.

2^{do}, That Sir Alexander never having been infest himself upon the disposition from his author, a conveyance from him of his personal right could not secure the pursuer against any latent deeds of his, such as backbonds or declarations of trust; 12th July 1670, Kennedy against Wallace, No 39. p. 10205.

3^{tio}, The personal right was adjudged from Sir Alexander since the minute, by other creditors than the arresters; so that the adjudgers would be preferable to the pursuer, though he should get a disposition in terms of the minute.

Answered for Sir Alexander and the Creditors arresters, to the 1st, That the adjudications having been led 44 years ago, and the reversion having not only been renounced by the apparent heir of the debtor, against whom the apprisings had been led, but he having also granted a bond of warrandice upon which he was inhibited, the right was unquestionably secure in the person of Sir Alexander's author.

To the 2d, That the pursuer behoved either to condescend on the deeds of Sir Alexander, from which he apprehended eviction, or behoved to depend on the warrandice which his creditors, who were called in the multiplepointing, ought to give the pursuer upon receiving the money from him.

To the 3d, Though the adjudgers from Sir Alexander had carried his right, yet they also carried a right to the minute of sale; and though they might pretend to be preferred to the arresters on the price, yet that was *perinde* to the pursuer, as to the subsisting of the minute.

THE LORDS found the minute of sale a binding contract on the pursuer, Mr Haldane, Sir Alexander Anstruther producing his author's infettment and sufficient progress, unless Mr Haldane condescend upon incumbrances that would exclude his right; but before payment of the price, found, that all the creditors, particularly the adjudgers, ought to be brought into the multiplepointing now depending, in order to be discussed, reserving to the Lords to consider what security or warrandice should be given by the receivers of the price.

Act. Alex. Garden.

Alt. Ja. Graham, sen.

Clerk, Hall.

Edgar, p. 139.

1738. November 14.

EARL MORTON *against* CREDITORS of CUNINGHAM of Boquhan.

No 15.

A PURCHASER at a public roup sought a defalcation, upon account of the teinds purchased by him along with the stock, to which he *alleged* the bankrupt had no good right. It was *answered*, That he purchasing with his eyes open, knowing the nature of the rights to the subject, and having also the creditors bound in absolute warrandice for the sums they receive, there ought to be no defalcation. THE LORDS found the pursuer was not entitled to a deduction of the price, but that, if he would, he might give up the bargain. It was taken notice of, that the case was not of a total want of right. Here was a right *ex facie* good, the purchaser only starting objections, which were never sustained to infer a defalcation of the price.

Fol. Dic. v. 2. p. 358.