

payment of his predecessor's debts, and that the creditors might do diligence against him personally as well as against the estate. Upon this occasion a question was started among the Lords, Whether an heir of entail, being an heir of provision, and *in re certa*, where the estate was the inventory, was only liable *secundum vires* of that inventory, that is, to the value of the entailed estate; or whether he was not, like other heirs, universally liable, only with the benefit of discussion. The President thought he was universally liable: Prestongrange and Kaimes were of another opinion; but, as it was not alleged in this case that the subject was exhausted, there was no occasion for determining that question.

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1755. December 16. ROBERTSON *against* ORME.

A CREDITOR adjudged his debtor's lands; and, after adjudication, raised a summons of maills and duties against the tenant of the lands, who, soon after he was served with the summons, paid his rent to his master. Thereafter the creditor did nothing for seven years, and then brought his action against the tenant for paying over again the rents he paid to his master; but the Lords found unanimously that, the creditor having let his adjudication lie so long over, the payment by the tenant was to be held a *bona fide* payment, especially as the tenant in this case was only served with a short copy, without a full copy of the summons.

LORD KAIMES said, that, though an adjudication was a disposition, yet it was no more than insecurity, during the legal; and therefore the adjudger very seldom chose to possess, nor was he to be presumed to have that *animus* from a simple citation in a maills and duties unless he followed it forth by a process.

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1755. December 16. CAMPBELL *against* HART.

ARCHIBALD HART, merchant in Edinburgh, was creditor to one Alexander, a pedlar, who dealt in trinkets and things of various kinds, in the sum of L.140; and upon the death of this Alexander he applied, by petition to the Commissaries of Edinburgh, to have his effects inventoried, valued, and sequestrated: which accordingly was done. The goods were valued to the sum of L.207, and locked up in a house, the key of which was given to James Smith, an officer of the Court. After this Hart, in order to secure his payment and prevent the diligence of other creditors, entered into a combination with the wife of this Alexander, and, upon her granting an obligation to pay him and some other creditors, allowed her to get the key from the said Smith, without any warrant of Court or order of law, and to sell and roup the goods, by which means Hart and two or three more of the creditors got their payment. After this, other creditors of the defunct, to the value of L.90, having confirmed themselves executors to the defunct, brought their action against Hart, and the other creditors who had got their payment in manner above-mentioned, as vitious intromitters;