

## S E C T. X.

Different securities on the Estate or Subjects of an Individual Debtor, how they are to be Ranked.—Ranking for Penalties or Expenses.

1758. July 21.

CREDITORS of AUCHINBRECK against RICHARD LOCKWOOD, Esq; of London.

IN the ranking of the Creditors of Auchinbreck, the interest produced for Richard Lockwood was two adjudications in 1737 and 1738, the accumulated sums in which amounted to L. 1360 Sterling.

On the 30th March 1739, a partial payment of L. 340 Sterling of these debts was recovered by arrestment of certain funds belonging to the common debtor:

A question from thence arose, Whether, in the ranking of the Creditors, these two adjudications should be stated to the full extent, so as to draw alongst with the other Creditors in proportion to that whole sum? or, Whether the L. 340 should be deducted, and the two adjudications ranked for the remainder?

*Pleaded* for the other Creditors, No creditor can claim from his debtor, or out of his estate, one farthing more than really remains due of his debt; every payment that is made by the debtor, or is recovered out of his effects, is an absolute extinction of the debt *pro tanto*. After a debt is thus extinguished and annihilated, it is difficult to conceive, by what rule of law or reason such debt can be revived, or supposed to exist, in any sense, or to any purpose whatever. An adjudication is a right in security; and, as every right in security is extinguished *ipso facto* by payment of the debt secured; by the same rule, a partial payment, as it diminishes the debt, so it proportionally diminishes the right in security; as an accessory cannot subsist without its principal. It is true, that an adjudication is a judicial disposition of the lands in security of the debt; and that the whole adjudication remains as a security, till the last farthing of the debt is paid; but a judicial disposition in security can be governed by no other principles, than a conventional or voluntary disposition in security would be; that is, it must be quite dependent upon the debt secured. The governing rule, and the firm ground to fix upon, in this, and all the cases that can be figured, is, That a right in security can never be one bit broader or narrower than the debt secured. Every variation in the last must affect the other in proportion; and although the right in security may re-

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If an adjudger recover partial payment out of a separate subject, he can still insist to be ranked with the other creditors for the whole debt in his adjudication.

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main over the whole lands, till the debt is fully paid, it will not follow, that it remains a security for the whole debt after the half of it is paid.

*Answered* for Richard Lockwood, As there is a deficiency in the fund for payment of the debts, Mr Lockwood can in no shape draw even what is justly due to him; so that the question here truly comes to this, Whether the other creditors shall be entitled to a share of what he recovered by his arrestment out of a different subject? Because, if the sum so recovered shall diminish or restrict *pro tanto* his adjudication of the estate of Auchinbreck, it must enlarge the fund of the other creditors' payment proportionally; by which means they would unjustly reap an equal benefit with himself from the diligence which he alone pursued.

As an adjudication is a judicial disposition of the lands in security, redeemable within the legal, upon payment of the whole accumulated sum, principal and interest; therefore the last farthing of the debt, as well as the first, has the whole adjudication for its security and payment: *Unaquæque gleba servit*. Hence it is an established principle in law, That if any part of the sum remains due when the legal of the adjudication expires, although the adjudger may have received nineteen twentieth parts of his debt, the whole lands adjudged become nevertheless the property of the adjudger, and his right is not restricted to such a proportion of the lands adjudged as may correspond to the sum that remains truly due when the legal expires. The security does not diminish as the debt diminishes, but remains invariably over the whole ground, until the whole debt is extinguished. And it is upon the same principle, that if different estates, belonging to the same person, or to different persons, are adjudged for one and the same debt, the adjudger will be ranked for his whole sum upon each estate; and what he draws out of the one, will not restrict his security upon the other, though he cannot draw out of the two more than his just debt. While, therefore, any part of the debt in question remains unpaid, it falls to be ranked to its full extent. And so this case was solemnly decided in express terms in 1734, Earl of Loudon against Lord Ross, No 23. p. 14114.

“ THE LORDS seemed to be chiefly moved by the precedent in 1734, above quoted, and a desire to preserve an uniformity in their decisions in a point of general consequence; and,

Found, That the partial payment did not restrict the adjudication, but that the same must be ranked for the whole accumulated sums therein contained, till what remains due be paid.”

Act. *And. Pringle.*

Alt. *Lockhart.*

Clerk, *Kirkpatrick.*

G. C.

*Fol. Dic. v. 4. p. 242. Fac. Col. No 127. p. 235.*