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to make his election, whether he will hold these as a stock bearing interest from said term, and what interest he is willing to pay, or if he will pay over the same to the creditors."

Upon a reclaiming petition for Wilson, upon this and other points,

"THE LORDS refused the same, in so far as it reclaims against that part of the Lord Ordinary's interlocutor respecting the bygone annualrents of the price of the lands preceding Martinmas last, and remitted to the Lord Ordinary to see the same accumulated by the petitioner into a principal sum, bearing annualrent, or let out on proper security, in terms of the interlocutor."

Act. R. Cullen.

Alt. A. Wight.

Clerk, Gibson.

Fol. Dic. v. 4. p. 253. Fac. Col. No 52. p. 135.

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1773. December 14. CREDITORS OF JOHN GEILS *against* COLIN RAE.

Bygone annualrents of the price of lands, in the hands of purchasers, from the trustees of a person insolvent, ordained to be accumulated into a stock, on the application of creditors.

THE deceased John Geils being much involved in debt, in the year 1736 conveyed his whole heritable estate to trustees, for behoof of his creditors. In execution of the trust, most of the lands were sold off in 1737; in particular, the lands of Little Govan-haugh were sold to Robert Rae, father of Colin, the party in the present question.

Mutual processes of multiple-poining, count and reckoning, and payment, &c. respecting the sums in the hands of the trustees, and the balances of the prices owing by the purchasers of Geil's subjects from them, had depended in the Court of Session since the 1764; which not being yet brought to a conclusion, an application was made to the Lord Ordinary to these conjoined processes, in February 1773, on the part of Geils's creditors, setting forth, that there was a great deal of interest lying in the hands of the purchasers, and craving that it might be accumulated into a principal sum, bearing interest from that date; and thereupon the Lord Ordinary pronounced this interlocutor: 'Finds, That the bygone annualrents of the price must, as on the 13th February instant, be accumulated into a stock, bearing interest from that day, and in time coming; and betwixt and Tuesday next, appoints the purchasers to make their election, whether they will hold the money in their hands, in that way, at the legal interest, or they will pay up the same to a person or persons, to be suggested by the creditors, at whose risk it shall be lent out.'

Against this interlocutor, Colin Rae, heir of Robert, one of these purchasers, preferred a representation; upon advising which, on the 2d March 1773, the Lord Ordinary pronounced this other interlocutor: "Having considered this representation, and also considered that the price which the representer was bound to pay, has been in his hands since the year 1743, so that the interest far exceeds the principal sum; and that the pretence for keeping matters as they are, viz. to force the creditors to end the ranking, is a compulsion too severe, and contrary to equity, and which this very day was rejected by the Court in a

case not so strong; refuses the desire of the representation, and holds the representor as bound to pay interest for the interest accumulated, as in the former interlocutor."

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Rae again represented upon this point; and likewise claimed the benefit of compensation upon a debt which was due to himself by John Geils. And this representation having been also refused, he next reclaimed to the Court, founding chiefly upon an agreement between the trustees and his father in 1743, whereby he was to retain the balance of the price till the incumbrances were cleared, and security given him as therein mentioned; and he was only taken bound to pay the said balance, with the interest thereof, according to law, "upon the performance of the obligation before written;"—and, *2do*, That in this case, the delay was altogether on the part of creditors and their trustees;—but if, after all, he should be subjected to this accumulation upon the debt due by him, he contended it would be equally just, either to allow him retention from the same, of the debt which was due to him by Geils, contracted so early as the 1725; or at least to accumulate, in like manner, the bygone interest, which is now due upon it for no less than 48 years past.

Upon advising the petition and answers, the COURT "adhered to the Lord Ordinary's interlocutors."

Act. Mat. Ross.

Alt. D. Rae.

Clerk, Gibson.

Fol. Dic. v. 4. p. 253. Fac. Col. No 94. p. 238.

SECT. VII.

Lex Commissoria.—Condition that the Purchaser shall find Caution for the Price within a Time.

1785. March 9. JOHN YOUNG against JAMES DUNN.

JOHN YOUNG sold to James Dunn a house belonging to him, at the price of L. 2500, which was to be paid or secured in a certain manner, at the term of Lammas following; otherwise the agreement to become void, and Mr Dunn to be considered as the lessee of the house, at the yearly rent of L. 225.

Mr Dunn not having implemented the first part of this bargain, Mr Young, sometime after the term of Lammas, proceeded, without any premonition, to dispose of the house to a third party. He then brought an action of removing, in which Mr Dunn

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A house was sold at a price payable at a fixed time, otherwise the sale to be void, and the purchaser to be considered as a tenant at a certain rent. On failure,