

1777. February 14. DICKSON of LOCKERWOOD *against* STEWART DOUGLAS of HURKLEDALE and the CREDITORS of CASTLEBANK.

A SUMMONS of ranking and sale having been raised at the instance of Rae of Castlebank ; after a very long dependance, the ranking was finished, and the decret extracted. At the sale, the estate having given a larger price than was expected, a reversion appeared to the heir, and made it worth her while to appear in the scheme of division, and object to the debts, thereby creating a new litigation, and protracting the payment of the creditors. This practice has of late become common, and is truly a ground of complaint : however, it is at present understood to be competent, though evidently requiring a regulation to put an end to it. The estate having been sold in lots, one of the lots was purchased by Colonel Stewart Douglas, as he said, at a price considerably higher than it was worth. In the meantime, the scheme of division being protracted, as said is, certain preferable creditors, particularly Dickson of Lockerwood, applied for a warrant upon Mr Douglas for a sum equivalent to his debt : to which the other creditors objected, that no such warrant could be granted, in respect it did not, and indeed could not, as yet, appear what sum would fall to that debt ; for, though Mr Dickson's debt would perhaps draw its full value, if the price of Colonel Douglas's lot and the other lots were made good, yet this was doubtful, the same having been bought, as was alleged, above their value,—the cautioners in some of them insufficient, or at least doubtful ; and therefore, until the final adjustment of the scheme of division, no such warrant ought to be given. Mr Dickson answered, that, to prevent any danger of this kind, he was willing to give caution to repeat, in every event, whatever he should now draw, more than, at last, he should be found entitled to draw.

18th December 1776, the warrant therefore was granted by Lord Hailes, Ordinary, agreeably to the opinion of the Court signified to him. Upon this Colonel Douglas himself reclaimed ; and, besides the facts set forth by the creditors, he further argued, that a procedure of this kind was contrary to all form, and rendered it impossible for schemes of division ever to be adjusted, or a purchaser ever to get up his bond, as it took off all the preferable creditors, to whom only the finishing it was an object, and left none in the field but the postponed creditors.

And by Mr Dickson, that the Colonel's appearance, as it was very late, so it was unfavourable : every thing paid by him by warrant of the Court would extinguish his bond *pro tanto*, so he could not complain. And, indeed, if this course was not followed, it was plain that he would keep in his hand a very large arrear of interest, which, though an advantage to him, was a loss to the other parties.

It occurred to the Lords, that there was a hardship on both sides. However, after considering the Act 1695, c. 6, they pronounced this interlocutor, 14th February 1777 :—“ In respect that the petitioner has not made any offer to consign the balance of his purchase money in the hands of the Magistrates and Town-Council of Edinburgh, in terms of the Act 1695 ; therefore allow the warrant to go out, in terms of the Ordinary's interlocutor, 18th December last, and refuse the petition.”