

No 3. due ; yet it must, in the mean time, have very distressing consequences with respect to the debtor. It commences a prescription of year and day, within which all his other creditors must carry on adjudications, whether their debts are due or not. If this was to be allowed, it would be impossible to carry on commerce in any shape. Lord Stair, lib. 1. tit. 17. § 15. has laid down the rule of law very differently from what is contended for by the pursuer. His words are : ‘ Legal execution is not competent ordinarily till delay, because none should be pursued till he have failed ; yet, in some cases, the debtor may be pursued before the term, to pay at the term, as *si vergat ad inopiam*.’ Here the rule is laid down, and the exception. The pursuer’s plea would convert the exception into the rule ; and by that means would throw every debtor, who is ready to pay his debts punctually, as soon as they become due, into the same distress as if he had already failed in payment, and made execution against his effects necessary. The diligence now insisted on is a stronger step than either the former arrestment or inhibition, which the Court dismissed as nimious ; and is evidently emulous and vexatious, as the defender’s credit is undoubted, he being worth several thousand pounds Sterling, and only engaged in the inland trade of manufactures, and not in any hazardous foreign trade. Neither are any of his creditors, or his other sister, who has a much larger claim upon him than the pursuer, making any demand upon him ; being perfectly satisfied with his ability to pay. And although the defender, for peace sake, offered the pursuer security for his debt on reasonable terms, which he rejected ; yet he is under no obligation, by law, to convey his lands for payment of a debt that is not due.

‘ THE LORDS adhered to the Lord Ordinary’s interlocutor, as on p. 60. ; and “ found expences due.” (See INHIBITION.)

Aft. *And. Pringle.*

Alt. *Ferguson.*

*Cockburn.*

*Fol. Dic. v. 3. p. 2. Fac. Col. No 173. p. 307.*

1781. November 14.

Creditors of Sir THOMAS WALLACE-DUNLOP, against Messrs BROWN and COLLINSON, Bankers in London.

No 4.  
Adjudication decreed, in security of contingent claims.

SIR THOMAS WALLACE sold a part of his lands to Messrs Brown and Collinson, at twenty-nine years purchase, according to a signed rental ; which Sir Thomas became bound to warrant for twenty-seven years.

Upon this obligation of warrandice, Messrs Brown and Collinson led an adjudication in security against Sir Thomas’s other lands and estates ; to which, in the ranking of Sir Thomas’s creditors, it was

*Objected* by the creditors : No illiquid debt can be secured by adjudication ; Erkine, b. 2. tit. 12. § 9. ; Stair, b. 3. tit. 2. § 15. An adjudication in security is of that fort which has come in place of apprisings ; with this difference only,

that the legal never expires. It is, therefore, properly a sale under a perpetual power of redemption ; but still it is a sale ; and as such requires a liquid price. The adjudication in question, however, is founded on as a security, not only for the deficiencies alleged to have been already incurred, and which have not been liquidated by any decree, but also for deficiencies, which do not now, and may never exist.

*Answered* by the adjudgers : It is admitted, that an adjudication for payment cannot proceed, except upon a liquid debt. But this rule does not hold with respect to adjudications in security. And the reason of the distinction is obvious. By the old form of appraisings, as much of the debtor's heritage was given to the creditor as was reckoned equivalent to his debt ; and, unless the debt was liquid, the sheriff could not possibly determine what quantity of lands it was proper to make over. The same reason holds in special adjudications upon the first alternative of the act 1672. : and, even in general adjudications for payment, it is necessary that the debt should be liquid, in order that the debtor may know the precise amount of the redemption-money.

But these reasons do not apply to adjudications in security : for though they are always general, and extend to the debtor's whole heritage ; yet, as the legal never expires, the property can never be thereby transferred to the adjudger. Neither is it here necessary, that the debtor should know the precise amount of the debt ; because he may at any time recover his lands, upon shewing that the creditor has been fully satisfied.

Accordingly, this sort of adjudication has ever been considered as a competent way of affecting the debtor's heritage, in security of such debts as can only be liquidated, *de anno in annum*, or of such as cannot properly be the foundation of an adjudication for payment. Thus, a widow may adjudge in security of her life-rent ; a cautioner in security of his relief ; and a purchaser in security of his warrandice ; Bankton, b. 3. tit. 2. § 78. ; Hamilton *against* Chiesly, 24th February 1675 ; (*See* ADJUDICATION IN IMPLEMENT) Bruce *against* Hepburn, 2d January 1684, observed by Fountainhall and Falconer, (*No* 1. *b. t.*) These several claims are not more liquid than the present. Like it they are contingent on future events ; but they are all equally capable of being secured by adjudication.

The Court had no difficulty upon the competency of the adjudication, as a security for both the past and the future deficiencies ; and therefore ' repelled the objection.'

Lord Reporter, *Westhall*.  
Clerk, *Ormer*.  
*Law.*

For the Objectors, *J. Swinton*.

Alt. *Robertson*.

*Fol. Dic. v. 3. p. 2. Fac. Col. No 1. p. 1.*