

1782. August 9. GEORGE NORVALL *against* JOHN BLAIR.

No 13.

Where the debtor offers to comply with the first alternative of the act 1672, it is not necessary that he purge incumbrances, before the probation of the value of the subject be gone into.

IN a process of adjudication, at Norvall's instance against Blair, the latter offered to comply with the first alternative required in the act 1672, cap. 19. ; by having such a part of his lands adjudged, as was sufficient for payment of the debt, principal and interest, with a fifth part more, and probation taken concerning the yearly rent and value of the subject ; by making production of a complete progress of the rights and titles of the lands ; and then by purging the real incumbrances affecting them. Accordingly he produced a progress ; but

Norvall *objected* : That unless the incumbrances had been already cleared, it was not sufficient to have done so ; otherwise, after much time and expence had been wasted in the investigation of the titles, it might, and indeed certainly would happen, that the incumbrances could not be removed ; and that thus, every creditor must be subjected to great procrastination, hardship, and loss, at the pleasure of his debtor ; abuses to which, it is not to be presumed, the act of Parliament would give a sanction.

Answered : The defender has strictly adhered to the statutory mode of proceeding ; in the order of which, as above stated, the clearing of incumbrances is the last requisite.

THE LORDS remitted the cause to the Lord Ordinary, with power to his Lordship, to ordain the defender to condescend upon what part of the lands libelled, shall be specially adjudged to the pursuer ; to allow a proof of the yearly worth and value of the said lands, so to be specially adjudged ; and to proceed further in the cause, and to do as he should see just.

Reporter, Lord Hailes.

Ast. Anstruther.

Alt. Hay.

Menzies, Clerk.

Fol. Dic. v. 3. p. 3. Fac. Col. No 64. p. 101.

Stewart.

Of the DEBT which is the FOUNDATION of the DILIGENCE.

1613. June 22.

BLACKBURN *against* LAMB.

No 1.
Pluris petitio.

IN an action, betwixt Samuel Blackburn and James Lamb.—THE LORDS found that where the half of the sum, for which the comprising was led, was paid, it would make the comprising to fall *in totum*.

Fol. Dic. v. 1. p. 7. Hope, (POINDING AND APPRISING.) MS. v. 2. folio 208.