

(RANKING OF ADJUDGERS AND APPRISERS.)

1784. December 23.

DOUGLAS, HERON, and Co. against DUNMORE and Co.

DUNMORE and Company obtained a decret of adjudication against a debtor of theirs, as charged to enter heir to his predecessor.

Afterwards Douglas, Heron, and Company, who had likewise used a special charge against the same person, though the *inducie* were not as yet expired, preferred a representation to the Lord Ordinary in the process of adjudication, craving to be conjoined, in the terms of the late statute. To this procedure Dunmore and Company objected; and

*Pleaded*: It is only with regard to the estates of such persons as have been rendered bankrupts, that a first adjudication can be used in the manner prescribed by this act. This is apparent from the preamble of the statute, specifying, as its object, 'the lessening of the expence of diligence on bankrupt-estates; and likewise from the care taken to ascertain and extend, by a particular clause, the qualifications of bankruptcy formerly known. An enlargement, indeed, of the reversion accruing to the debtor himself, attained at the hazard of his competing creditors, never could be intended. Nor could the benefit of this statute, at any rate, be assumed in this instance by Douglas, Heron, and Company, because, till the *inducie* of their special charge be expired, they are not 'in readiness to adjudge;' a circumstance peculiarly required in all cases of this kind.

*Answered*: The chief purpose of this enactment was, to provide a speedy and equal distribution of the effects of merchants and traders who had become bankrupts; and hence the criterions of insolvency, as established by the statute 1696, were so increased, as to be more accurately accommodated to the situation of that class of men. The clause, however, by which this dispute must be determined, is quite general. It enacts, That 'the Lord Ordinary, before whom *any* process of adjudication is called, shall make intimation, &c.' In order, too, as it should seem, more clearly to remove the present question, the appellation of *bankrupt*, used in all the other clauses of the statute, is here studiously amended into that of *common debtor*, its declared purpose being, 'that any other creditors of the *common debtor* who may think proper to adjudge, and are in readiness for it, may produce the instructions of their debts, &c.' Such an interpretation, indeed, is essentially necessary; since, to require the statutory proof of bankruptcy, previously to a conjunction of the adjudications, far from lessening the expence of diligence, would greatly add to it. The other objection seems equally ill founded. Were this enactment confined to those who formerly could have demanded a decret of adjudication, no creditor, unless he had not only executed a summons of adjudication, but had also called it before the Lord Ordinary, could derive any advantage from it.

No 49.  
Act 23 Geo.  
III. cap. 18.  
How far the  
statutory  
proof of bank-  
ruptcy is re-  
quisite, to en-  
title a credi-  
tor to be con-  
joined in the  
first adjudica-  
tion. What  
is meant by  
the "Credi-  
tors being in  
readiness to  
adjudge."

(RANKING OF ADJUDGERS AND APPRISERS.)

No 49.

THE LORDS over-ruled the first objection, but sustained the second. And Found, "That the days of the special charge used by Douglas, Heron, and Company, not being yet expired, they were not entitled to be conjoined in the adjudication led by Dunmore and Company."

Reporter, *Rockville.*  
and Company, *Blair.*

For Dunmore and Company, *Honyman.*  
Clerk, *Colquhoun.*

For Douglas, Heron,

*Fol. Dic. v. 3. p. 15. Fac. Col. No 188. p. 296.*

*Craigie.*

1794. June 17.

The CREDITORS of Alexander Hay against JAMES FLEMING.

No 50.

23 Geo. III.  
c. 18. § 5.  
Objection to  
the interest of  
a creditor  
who had been  
conjoined in  
a process of  
adjudication,  
that he had  
produced, as  
his grounds  
of debt, a  
copy of a bill,  
and notorial  
protest taken  
on it, but not  
the original  
bill itself,  
sustained, al-  
though all ob-  
jections were  
reserved *con-*  
*tra executio-*  
*nem.*

ALEXANDER HAY, merchant in Canada, became bankrupt in 1786. In summer 1787, an adjudication was led against his estate in Scotland. When, a year from its date was almost expired, the attorney of James Fleming, merchant in London, craved to be conjoined in a subsequent adjudication then brought; and produced, as his grounds of debt, a copy of a bill, a notorial protest taken on it in London, the account attested by the debtor in payment of which the bill was granted, and an affidavit on the verity of the debt made before a magistrate. The bill itself had been sent abroad, in hopes of procuring payment. A decree of adjudication was accordingly obtained, in which all objections were reserved *contra executionem*.

The bill itself was afterwards produced.

In the ranking of Hay's creditors, it was

*Objected* to this interest: *1mo*, The 23 Geo. III. c. 18. § 5. gives the privilege of being conjoined only to such creditors 'as are in readiness for it, and produce the instructions of their debts.' Fleming did not come under this description, a copy of an alleged bill not being a legal instruction of a debt.

*2do*, Although Fleming had led a separate adjudication on the grounds of debt produced, the objection would have been equally strong at common law. It is a settled point, that an adjudication can proceed only upon a decree of constitution, or a liquid written ground of debt. Fleming had neither to produce. The object of reserving objections *contra executionem*, is not to enable creditors whose debts are not legally instructed to lead adjudications, but merely to give time for discussing those exceptions against a voucher *ex facie* valid, which cannot be instantly verified; *Fol. Dic. v. 1. p. 11.*; 7th March 1794, Creditors of Neil Macneil against Saddler; p. 122. v. 1. of this Dictionary.

*Answered*: It was the object of the act of Parliament to give the privilege of being conjoined to all creditors, who, had there not been danger from delay, might effectually have led separate adjudications. The claimant might have done so in