

1801. *January 14.*

DAVID CAMPBELL and Others, *against* The COMMON AGENT, in the ranking of the Estate of EDDERLINE.

Dugald Campbell's affairs being embarrassed, he conveyed his estate of Edderline to trustees for behoof of his creditors. At the date of the trust-disposition, he had not been rendered legally bankrupt.

By the trust-deed, the lands were conveyed to the trustees, and the survivors or survivor of them, absolutely and irredeemably, for behoof of the grantor's whole creditors. The trustees were also empowered, without the consent either of the grantor or of his creditors, to sell such parts of them as should be sufficient to pay the whole of the trustor's debts; and after doing so, the trustees were appointed to execute a strict entail of the residue. The trust-deed was further declared irrevocable, until the whole purposes of the trust should be fulfilled.

The trustees were infest, and acted under the trust-deed. The grantor died soon after the date of its execution. Soon after his death, an heritable creditor brought a judicial sale of his estate.

After the commencement of this action, several other creditors led adjudications against the estate, having previously used special charges against Colin Campbell, as Dugald Campbell's eldest son and heir.

Dugald Campbell, at the date of the trust-deed, was indebted to Neil Campbell of Inverliver in upwards of £2000. Inverliver's affairs were also under trust, and his trustees, by way of securing this debt, also led an adjudication of the estate of Edderline, but in place of charging Edderline's son to enter heir in special to his father, they took a decree of constitution against his trustees, under the qualification that they should not be personally liable, and on this decree they led their adjudication.

Afterwards, in the process of ranking and sale, they objected to the validity of the adjudications led by the other creditors, and

Pleaded: Before the date of these adjudications, Edderline was completely divested of the lands by the trust-deed. His right had resolved into a mere claim to the reversion; 7th March 1781, Muir against Macadam, No. 114. p. 8688. In consequence of the infestment of the trustees, Edderline's son could not have been served heir in special to his father, because a service proceeds on the assumption, that the ancestor died last vest and seized in the lands, and if a special service was incompetent, the special charge which was meant to supply its place must be equally inept; 11th March 1756, Dalziel against Henderson, No. 42. p. 16204. The only regular adjudication, therefore, is that which has been led against the trustees.

The Lord Ordinary found, " That the late Dugald Campbell of Edderline " was not completely divested of the real right and property of his estate, by " the trust-right and infestment thereon, founded on by the objectors, the same

No. 11.

A person before being rendered legally bankrupt, having executed a trust-deed, by which the trustees were empowered to sell as much of his estates as should pay his debts, and entail the remainder on a certain series of heirs, it was found, that the grantor was not so far denuded of his property as to invalidate an adjudication led after his death, by certain non-acceding creditors, upon a special charge given to his heir-apparent.

No. 11. “ having been a trust for the granter’s behoof, though it contained a power to
 “ the trustees of selling the lands, for the purpose of paying off the granter’s
 “ debts, but which power the trustees never exercised, and still stood bound,
 “ in the event of a sale, to reconvey or settle the remainder for behoof of the
 “ granter and his heirs, which did not disable his lawful creditors, not acceding
 “ to the trust-deed, from doing diligence against himself while he lived, or against
 “ his apparent heir, after his death, for payment or security of their debts ; and
 “ therefore repelled the objections to the adjudications led by the other creditors
 “ against the son and the apparent heir of their debtor after his decease.”

A reclaiming petition, presented by the trustees of Inverliver, was unanimously refused, without answers.

Lord Ordinary, *Justice-Clerk Eskgrove*.
 Clerk, *Home*.

For Inverliver’s Trustees, *Fletcher*.

R. D.

Fac. Coll. No. 210. p. 480.

1801. *January 20.*

MARGARET BUCHANAN, *against* JAMES PURDON GRAY, and his Administrator-in-Law.

No. 12.
 An adjudication led on an heritable bond against the heir of the granter, restricted to a security, in respect the adjudger omitted to obtain a decree of constitution against the heir before leading the adjudication.

Will the penalty in a general adjudication be restricted in a question with the debtor?

In 1787, Isabella Gray granted an heritable bond over her lands of Chryston, for £1000 lent her by Mrs. Margaret Buchanan.

Isabella Gray died in 1790, leaving an infant son, James Purdon Gray, to whom his father John Purdon was administrator-in-law.

The interest of the loan was regularly paid till Whitsunday 1793. But the rents of the lands proving insufficient to defray the annual burdens on them, Mrs. Buchanan obtained first a decree of mails and duties, and thereafter adjudged the lands for the principal sum in the bond, bygone interest, and £200 of penalty, accumulated into one sum, bearing interest from the date of the decree.

In the process of adjudication, James Purdon Gray was cited personally, and John Purdon edictally, as his administrator-in-law.

Under these circumstances, John Purdon, in virtue of a decree of the Court of Session, sold part of the lands for payment of the debts, and out of the price he offered to repay Mrs. Buchanan the principal sum, bygone interest and the whole expenses which she had incurred. But she refused to discharge her adjudication, excepting on payment of the full sum contained in it, including the penalty.

A multiplepointing was, in consequence, raised in the name of the purchaser in which John Purdon Gray