

the goods confirmed to pay the debts wherein he was bound.—THE LORDS sustained his confirmation, providing he produced a right to the debt, or a discharge thereof before extracting.

*Fol. Dic. v. 1. p. 126. Fountainball, MS.*

No 52.  
right to the debt, or discharge of it, before extract.

1685. November 20.

BURNET against VEITCH.

ROBERT BURNET, writer to the signet, seeking an adjudication against Veitch of Dawick's lands, and the clerk scrupling, he moved it to the Lords, that the ground of it was a bond of relief, and as yet there was no distress. THE LORDS allowed the extract of the decret of adjudication to go out, with this quality, that it should not take effect till distress. This was opposed by Pitmedden and others, as informal, seeing in effect it was no debt till there was distress or payment, and is but a conditional obligation, *et dies incertus*, which cannot be the ground of any diligence; yet he might lose his relief, being prevented by others, unless he came in *pari passu* with them on his bond, or else cause the creditors, to whom he is bound, adjudge; which they may refuse, as being sufficiently secured.

*Fol. Dic. v. 1. p. 126. Fountainball, v. 1. p. 376.*

\* \* See This case by President Falconer, No 12. p. 140.

No 53.  
A decree of adjudication in relief was allowed to be extracted before distress, but under the quality, that it should not take effect till distress.

1686. November.

DICKSON against GOVAN and MYLNE.

JOHN PETER of Whitsleid as principal, and John Bonar as cautioner, having granted bond to Mr John Aitchison for 2000 merks, as also John Peter being due to John Bonar other 500 merks, upon which John Bonar is infest in an yearly annualrent out of a tenement of land in Edinburgh; and he having obtained a decret of pointing of the ground for four year's annualrent, upon which he appraised the tenement; and George Dickson, as having right by progress to an adjudication of the same tenement, pursues a reduction and improbation against James Govan and Alexander Mylne, as heir to John Bonar, of the foresaid apprising; and the terms being run, and the pursuer having craved certification, *contra non producta*; alleged for the defenders, That they had produced sufficiently to exclude the pursuer's title, the apprising being prior to the pursuer's adjudication, and so there could be no certification *contra non producta*. Answered, That the decret of pointing of the ground, whereupon the apprising proceeded, was only in absence, and is intrinsically null; for the bond being only a bond of relief, as to the 2000 merks, there could have been no decret of pointing of the ground as to the annualrent of that sum, unless John Bonar had been distress, and had actually made payment of the annualrent to Aitchi-

No 54.  
An apprising found null because led, not by the creditor, but by the cautioner upon his bond of relief; before he was either distressed or had made payment.