

judged for, yet the real right, once established to that extent, continues unvariably the same, till the last farthing be recovered.

Found, that the adjudger, who had recovered the partial payment out of the debtor's separate funds, ought, notwithstanding, to be ranked for the whole sum in his adjudication, *pari passu* with the other adjudgers, in order to recover payment of the remainder.

*Remarkable Decisions, Vol. II. No. 6. page 11.*

1740. *December.*

LAING *against* NICOL.

A decree of furthcoming in absence, being suspended, the charger, to instruct the debt due by the arrestee to the common debtor, produced a bond which the arrestee had granted to a third party, with a general disposition of moveables by the third party to the common debtor.

The objection to this progress was, that a general disposition of moveables without confirmation, is not a vesting right, more than a disposition of land without infeftment: that the subject still remained *in hæreditate jacente* of the disponer, insomuch, that a creditor of his confirming, would exclude the general disponee; that, therefore, the arrestment laid in the hands of a person who owed nothing to the common debtor, but to his cedent, could not be effectual. *2do*, Confirmation being *actus legitimus*, no person is entitled to confirm but he alone to whom the subject belongs. Creditors have no power to confirm their debtors: if this could be, there had been no occasion for the Act 1621, inventing the charge against an heir at the instance of his proper creditors.

What most diffculted the judges was, that the arrester could not confirm a disposition to which he had no right. Precedents of the Commissary Court were appointed to be searched. None were found; and there the matter was suffered to rest.

The first point also seems well founded. A general disposition establishes no right, till it be completed by confirmation: and a decree of furthcoming, cannot oblige the arrestee to make payment to the arrester, when he is not bound to make payment to the common debtor. And, if it be demanded, by what sort of diligence then is a general assignation of moveables to be carried, where there is no confirmation; the answer is, that it must be carried by a process of adjudication, which is the legal remedy where others fail. Nor is it a novelty, that moveable subjects should be affected by adjudication. Where the debtor in a moveable bond dies, without any to represent him, there can be no arrestment, because there is no person against whom it can be executed: the only remedy is to adjudge the bond from the creditor, which will entitle the adjudger to prosecute diligence, as the original creditor himself might have done. In the same manner, where a general assignee is not confirmed, his creditors cannot point the goods contained in the general assignation, because these goods are not his before confirmation: as little can there be a decree of furthcoming; and so the only remedy is a legal conveyance of the general assignation itself, by adjudication.

*Remarkable Decisions, Vol. II. No. 17. page 31.*