

obtain a preference for his wadset sum, in that case, the lands being sold, the purchaser may remove the wadsetter without using the order of redemption, which the wadstter dispenses with, by his betaking himself to a preference as creditor in the wadset money.

No 44.

Fol. Dic. v. 4. p. 207. Kilkerran.

* * * This case is No 298. p. 12160. *voce* PROCESS.

SECT. X.

Purchaser acquiring an interest not produced in the ranking.—Method of accounting for the price.—Division of the price.—At what time to be made ?

1739. *November 21.* CRAWFURD *against* HUNTER.

It has been adjudged, that though a decree of ranking be closed, yet when the scheme of division comes to be made out, an adjudger, for example, who had not appeared in the ranking, may appear and claim his share in the division, without being put to the necessity of reducing the ranking. But it was here found, that a purchaser, who, by decree of ranking, is decerned to pay to the creditors as they are, or shall be ranked, thereafter purchasing an adjudication which had not been produced in the ranking, could not be allowed, at making up the scheme of division, to found upon this adjudication for its share of the price, so as to hinder the creditors ranked from drawing their full share for which they were ranked ; reserving to him his action of repetition as accords.

No 45.
The purchaser acquiring an adjudication that had not been produced in the ranking, not allowed, at making up the scheme of division, to found upon it.

THE LORDS were not unanimous in this. Several of them thought, that as he might retrocess his constituent, who would be admitted, so might he be admitted to claim his share, at least to the extent of what he had paid for the debt, though not farther.

Fol. Dic. v. 4. p. 211. Kilkerran, (RANKING AND SALE.) No 1. p. 468.

1747. *June 30.*

THE TRUSTEES FOR MERCHISTON'S CREDITORS *against* MITCHELL of Pittedie.

CHARLES MITCHELL purchased at a judicial sale the lands of Pittedie, to be entered to at Whhitsunday 1726, and John Lowis of Merchiston being a considerable creditor thereon, he advanced to him several sums on his bills, con-

No 46.
A person being debtor in a sum bearing interest, which he was not obliged

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to pay, in regard he was creditor in a larger sum with interest, the payment whereof was suspended on a distant event, which sums were imputable in payment of each other; it was found that the excesse of the interests of the larger sum, did not progressively extinguish the lesser.

cerning which, upon Merchiston's bankruptcy, this question arose, Whether these advances should be imputed in payment of the share falling due to him of the price of Pittedie, or Mr Mitchell be considered as a creditor therefor, and debtor in the whole price? THE LORDS, 4th February 1732, " Found the sums contained in Merchiston's bills were imputable *in solutum* of the debt due to Merchiston, affecting the estate of Pittedie purchased by Charles Mitchell." And, in application thereof, the LORD ORDINARY found, " That the principal sum in the bills, with the annualrents due thereby, were to be deducted out of the sums for which the Trustees of the Creditors of Merchiston were ranked upon the price of Pittedie, as come in place of Merchiston.

As Mr Calderwood of Pittedie's Lady was infest for her liferent-annuity, a considerable part of the price fell to be retained by the purchaser, to answer it, in the event of her surviving her husband, and he to be accountable to the creditors for the interest thereof during Pittedie's life, and the remainder only to be immediately divided amongst them,

Of which there fell to Merchiston's share	-	-	L. 479	9	86
Bills by Merchiston to Mitchell amounted to	-	-	9418	15	1
Deduct Merchiston's immediate draught	-	-	4799	8	6
Amount of the bills not reduced by the draught	-	-	4619	6	7
Merchiston's share of the retained money, to be paid with interest on the death of the Lady Pittedie,	-	-	L. 11467	12	4

By the scheme of division the purchaser was ordained to pay to the creditors, except Merchiston, their share of what part of the price was not to be retained, as also under the same exception the interest of the retained part, till the Lady's liferent should take place; and the reason for not paying Merchiston was given, " That the money drawn by him of the money not retained was compensated at Whitsunday 1726 years, by payment made by the purchaser to Merchiston, and that the said payments exceeded the money drawn by L. 4619:6:7, which, and annualrent thereof from Whitsunday 1726, was to be taken out of the share of the retained money, falling to the said trustees and annualrent thereof."

The Creditors of Merchiston pursued the purchaser, to have it found and declared, that Merchiston's bills, with the interest thereon, were extinguished at Candlemas 1740, at which time their arose some excesse on the interest of their share of the retained price, and that it ought to bear interest to them for the time to come until the commencement of the liferent. This they endeavoured to make out by considering Merchiston as debtor in his bills, in so far as not extinguished by the immediate draught, and creditor in his share of the retained price; and these two claims being by interlocutor, 4th February

1732, declared imputable to one another, the interest of the retained sum behaved annually to extinguish so much of the principal of the bills, and thus by a progressive account the extinction was made. They *pleaded*, That they might have insisted for the imputation from the time of the first year's interest falling due on the price at Whitsunday 1727, but they only demanded that the *calcul* should be made from the date of the interlocutor.

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On the other hand, it was *contended*, That the application ought to be made when the interest arising on the retained price extinguished the bills and interest without any progression.

Two schemes were made by an accountant, agreeably to the demands of the several parties, and the LORD ORDINARY, 29th January, and 5th February, 1745; "Approved of the report of the accountant, as stated in the first page of the report," viz. that agreeable to the claim of the defenders.

On bill and answers, the LORDS adhered.

Act. Murray.

Alt. A. Hamilton.

Clerk, Kirkpatrick.

D. Falconer, v. 1. No 195. p. 260.

1756. July 27. DOCTOR MIDDLETON *against* FALCONER of MONKTOUN.

THE estate of Monkton being brought to a judicial sale, Patrick Falconer was preferred as the highest offerer; and, by the decret of sale, the lands were declared to pertain to him, "upon payment of the price offered, viz. L. 44,000 Scots, and interest thereof from the term of Whitsunday 1695, to the creditors as they should thereafter be ranked," and a bond was granted in these terms with a cautioner.

No 47.

The purchaser of a bankrupt estate, accounting for the price, can only have credit for the debts ranked when he paid the same.

By the regulations 1695, it is provided, that the ranking of the creditors shall be concluded before the estate be exposed to sale. But in this case, which was prior to the 1695, the ranking was not concluded till the 1699, and at that time a decret of ranking was extracted in favour of the preferable creditors, whose debts at that period exhausted the price to a trifle. These debts were paid by Mr Falconer, the purchaser, as he found convenient, some of them not for several years after; and matters rested upon that footing without any ultimate clearance, the bond for the price remaining in the hands of the Court.

Patrick Middleton, one of the postponed adjudgers, brought a process against the present Monkton, for payment of the balance that was supposed to be due upon the bond for the price. In bar of which, the defender *insisted*, That the bond was extinguished by payments made to the preferable creditors, as ranked by the decret 1699. This matter resolving into a count and reckoning, was remitted to an accountant, who made a report stating the account in two different views. By the first, the debts were supposed to have been paid in the 1699, the date of the decret of ranking; or which is equivalent, the defenders