

and penalty if any be contained in the bond or other writ which is the ground of the adjudication; without any fifth part more. For if in such a case, a fifth part more be adjudged for the adjudication is void and null act of seder. 26 Feb. 1684. Because, albeit a creditor is obliged to Lyell his principal sum Annual rent and Penalty; and a fifth part more being uncertain whether the debt would appear or not, yet he ought not to extract a Decree for the additional fifth part in the Debtor's absence of Decemr. 1684. Geddie contra Gelfer 16 Feb. 1684 Wilson contra Hume. Creditors possessing by a General adjudication are subjected to a burden account by reason of their Intromission, or Compensation, or the like Exceptions within the Legal. Position attained in a General adjudication; where the Debtor does not appear and produce a proquest, doth not bar the adjudger from his personal Diligence against him. Because not only is the Clause in the act of parliament 1672 Exempting the Debtor from Diligence, adjoined to that part thereof presupp. of his appearance &c. and before the Clause punishing his contumacious absence: But also it were unjust, that he should reap any advantage by a deed to which he refuses his consent &c. Hence observe. on act 19 Par. 2 Sess. 3 Ch. 2.

For Expediting Diligence by adjudication more easily, and preventing the great Inconvenience that arises between Creditors and their Trustees in the Cities where assignments are made of Debts in order to adjudge: A factor upon a Bankrupt estate, may raise summons and obtain Decree of adjudication at the Expence of the Estate in his own Name, to the behoof of all Creditors giving their Instructions of Debt to the Clerk of the process within 40 days after sequestration; with this Declaration signed by each of them that he gives his Documents of Debt, to the end the factor may adjudge for him, Lyelling all ways upon the fore said Declaration. The Expence of which adjudication is to be allowed to the factor at Counting; and at the event of the Ranking and Sale, to be proportioned among the Creditors for whose behoof the adjudication is led, according to their several Shares and Interest in the price; and fifth thereof to be repeated from them by the preferable Creditors.

to whom the Rents Intromitted with by the factor shall be found to belong. Such a factor may also at the Desire of Creditors failing to give in their Instructions within the 40 days, or at least before raising the summons for adjudging, adjudge a second time in his own Name for their behoof upon their own Expence. And all Creditors may from time to time adjudge in their own, or in the factor's Name, as they think fit, but the Ranking be concluded. These Creditors for whom adjudication is to be obtained in the factor's Name, have the same benefit thereof, as if they had adjudged by themselves upon their respective portions of Debt, or were Retroceded by the factor into every creditor may, for his own security, extract a part of the Decree concerning his own debt, upon payment of the ordinary ones, without necessity to extract the whole, act of seder. 23. Novemb. 1711 & 2. But this Method of adjudging Bankrupt Estates in Name of the Common factor is seldom observed: Because Bankrupts or some of them are found therein, or because such Estates are adjudged in order to sequestration.

All imaginable Dispatch is allowed to purchasers of adjudication. The Lord sustains a substitution of the Debt and adjudication, as it is in the first summons, albeit the Debt was suspended and under Suspension allowing the Dealers of Reduction, if Instantly Perfected, to be preferred by Way of Defence, and Reserving them if not Instantly Perfected, contra Execution in a former instance of Mails and duties at such an adjudge. Instance 26 July 1676 Boyd contra Boyd. If the Debtor appears or not, Creditors are not suffered to stop adjudgers and put them to Run the Chance of the Roll, by pressing to see the Process for their Interest: And if they produce any Interest, the ordinary will hear parties immediately thereupon, without its going to the Roll. Stair lib. 3 tit. 2. § 53. Nor was the Superior allowed to postpone Defences in an adjudication, where the Defender appeared. See 30 Novemb. 1675 Lincolch contra Blair and Strachan. Where Comparance is made for the Debtor and Resignation before it was preferred to the approving Notary.