

No 2. not be adjudged to pertain to the pursuer.—*Replied*, That the right which stood in William Scot's person, behoved to be adjudged to pertain to him; and he decerned to be infest in the same manner that William was.—THE LORDS repelled the exception, without prejudice to Drumlanrig's right, *prout de jure*.  
*Spottiswood*, (ADJUDICATION) p. 9.

1629. February 26.

No 3.  
 In an adjudication *contra hereditatem jacentem*, a single summons without continuation is sufficient.

IN an action of adjudication, to hear the debtor's heirship goods be decerned, to be declared to pertain to the creditor, against a party, who being convened before, as lawfully charged to enter heir to the debtor, for payment of the debt, had renounced; this action, it was found, needed no continuation, being accessory to the preceding decret obtained, wherein the defender had renounced: For here no party was convened for delivery of the heirship, but only adjudication craved of the right, to be declared to belong to this creditor, which was, only to put the creditor in the heir's place. (*See Stair's Inst. p. 419.*)

*Durie*, p. 439.

Clerk, *Hay*.

1638. December 19.

CORSER *against* DURIE.

No 4.  
 An adjudication upon a renunciation carries all by-gones, arising after the common debtor's death, altho' moveable; this *ex necessitate*, there being no other method of affecting such a subject.

IN an adjudication, umquhile William Durie of Newtown, being debtor by his bond, to one Corser in Dysart, of a sum of money; which, being desired to be regiftrate against Durie, his son, and his tutors and curators, as lawfully charged to enter heir to his father; who, renouncing to be heir; upon this renunciation, Corser the creditor, intended action, against this son of his debtor, of adjudication, for adjudging of the right of the lands of Newtown, which pertained to his umquhile father; and whereof he was in possession at the time of his decease; to this pursuer; and consequently, that this defender should be decerned to pay to the pursuer, the mails and duties of the lands intromitted with by him, and his tutors and curators, of all years since the decease of his father, so far as would satisfy this pursuer's debt. And the defender alleging, that this form of summons and process, ought not to be sustained, being far against the practice used in the like cases: For *first*, the pursuer ought to pursue to hear his debtor's right adjudged; which, being once adjudged, then he might competently, upon that right so adjudged, pursue for the mails and duties thereof; but to pursue for the same, before he had the right established in his person, and before it were tried if that right were of that nature, which might produce an action for the duties of these lands; and that sentences were given first thereon; it never has been heard; for adjudication is a process for executing of a sentence, and resembles in this point a comprising; and the intending of a process of comprising, or denouncing to comprise, before the comprising were expedite, and to-

tally compleat, could never be a ground to pursue for mails and duties; no more in a process of adjudication, can the mails be acclaimed before the sentence of adjudication were first given. THE LORDS repelled the allegiance; and found this process might be sustained, both to crave the right of the lands, to be adjudged in one summons, and the profits decerned also; the first being found to crave the bygone mails uplifted, even as in a non-entry, the lands being decerned, or craved to be decerned, to be found in non-entry; the donator in the same summons may crave the profits to be liquidate, and decerned; and, as in a declarator of escheat, the general declarator may be sought for declaring the rebellion; so also the special declarator for the particular profits of the lands, in one and the same summons. See July 21. 1736. betwixt these parties\*.

In this process, the pursuer's procurators having past from any craving of a particular adjudication, either of lands, teinds, or any writ of the same; and only craving generally, adjudication of all right which was competent to the defunct, in the defunct's person, to any lands, teinds, goods, or gear whatsoever, generally. This general adjudication was sustained, although craving nothing specially to be adjudged.

A&C. *Advocatus.*Alt. *Nicolson, Gilmore and Dunlop.*Clerk, *Scot.**Fol. Dic. v. 1. p. 3. Durie, p. 867.*

1680. January 27. M'CALLA against COUSTOUN and GUILL, &c.

MALCOLM M'CALLA having pursued James Coustoun, as representing his father, for payment of his father's debt, as charged to enter heir to him; he renounced to be heir, and was affoizied; and M'Calla obtained adjudication, *contra hereditatem jacentem*; but thereafter, Coustoun enters heir to his father, and assigns his right to one Guill; and they jointly pursue reduction of the adjudication, and offered to satisfy the debt. It was answered, That Coustoun having once renounced to be heir, had no recourse against that party, to whom he renounced, nor any reversion of his adjudication, which was competent to other creditors adjudging, and no way to Guill as assignee to Coustoun.

THE LORDS found Coustoun having renounced or assigned, he had no reversion, or recourse to satisfy M'Calla's adjudication.

*Fol. Dic. v. 1. p. 3. Stair, b. 2. p. 749.*

No 4.

No 5.

An Adjudication being led *contra hereditatem jacentem*, upon a renunciation; the heir afterwards entering, found to have no right to redeem the adjudication.

\* The former dispute here referred to, between the same parties, Durie p. 820.; regarded a mere matter of fact: Whether the defender had intromitted with rents, in right of his father, so as to subject himself as heir; or in right of another person; his father having no title to the property?