

(FORMALITIES OF THE DILIGENCE.)

No 11.

Stormonth are situated; it is contended, That such inhibition could not have affected the heritable bond, as having no relation to lands within the county of Edinburgh; and an adjudication before the Sheriff of Edinburgh cannot convey a subject, which an inhibition, executed at Edinburgh, and registered in the particular register there, cannot affect.

The bond in question differs from a bond secluding executors; for that it is a right to be constituted on lands, and has a relation to specific lands: It therefore is a proper subject for an apprising, or an adjudication *cognitionis causa*, which a bond secluding executors, being merely personal, is not.

It was contended, That infestment could not follow upon this bond: But this, if true, would not be material; for neither could infestment follow upon a reversion simply personal, which nevertheless may be the subject of an adjudication *cognitionis causa* before the Sheriff of that shire, where the lands to which it relates are situated: But further, infestment may follow on this bond; for the debtor in the bond consents that fasine be taken upon his whole lands in Scotland; and there seems no reason why the creditor may not execute the general precept.

The argument drawn from the effect of an arrestment in the hands of co-partners does not apply to the present case: After a co-partnership has commenced, the subjects conveyed by each partner to the co-partnership no longer belong to each partner; but the right of property in them is vested in the company, and each partner has a right only to his proportion of their value, after settling of accounts: This interest is arrestable, but the arrestment does not attach heritable subjects; for accomplishing of which the arrester must first insist in an action of forthcoming, and obtain decret against the co-partnership, and then he may affect the heritable subjects by adjudication.

An *hereditas jacens* is an *universitas* of subjects adjudgeable; but the *universitas* can only be adjudged to the creditor by that judge within whose jurisdiction the whole subjects of the *universitas* lie.

THE LORDS sustained the objection to the decret of adjudication, obtained before the Sheriff of Edinburgh, That the lands of the debtor in the heritable bond, lay all out of the Sheriff's jurisdiction.

For Hyslop, G. Brown.

Alt. D. Scrymgeour.

Fol. Dic. v. 3. p. 8. Fac. Col. No 114. p. 169.

Dalrymple.

1757. November 18.

RANKING OF THE CREDITORS OF ALISON OF DUNJOP.

IN the ranking of the creditors of Dunjop, it was objected by some of the creditors, to an adjudication against the estate of Dunjop, produced by Anne and Margaret Auchinlecks, That though the summons of adjudication recited the

No 12.

An adjudication restricted, where the accumulate sum

## ADJUDICATION AND APPRISING.

(FORMALITIES of the DILIGENCE.)

No 12.  
had been left  
blank in the  
decret.

debts on which adjudication was fought; yet the accumulate sum was blank in the decret of adjudication, and abbreviate of it. The creditors did not insist upon reducing the adjudication *in toto*, but only to restrict it to a security for the principal sums, annualrents, and expences of deducing the adjudication.

*Answered* for Ann and Agnes Auchinlecks, The objection was not good to strike them off from the penalties and accumulations of the sum in their adjudication. The act 1672, which prescribes the method of adjudications, does not require the amount of the principal sum, annualrents, and penalties of the adjudication, to be expressed in one sum; neither is there any warrant in the signature of the judge for ingrossing that amount: And though the extractors are in use to fill it up in extracting the decret, yet there is no necessity to do it, the same being merely an operation of figures, in which there can be no mistake, and which any one may do.

*Replied* for the creditors, Comprisings gave originally as much land as was equal to the avail of the sum; afterwards they gave a fifth part more; and therefore the sum ought to have been ascertained and expressed when the decret was pronounced. Besides, as the adjudication becomes a real burden upon the lands, it ought to appear with certainty from the records, how much the lands are burdened.

THE LORDS found, That the accumulate sums, not being filled up, is no nullity in the adjudication; and restricted the adjudication to a security for the principal sum, annualrents, and expences of deducing the adjudication.

For Auchinlecks, *Arch. Murray.*

For the Creditors, *Bruce.*

*Fol. Dic. v. 3. p. 9. Fac. Col. No 58. p. 96.*

*Dalrymple.*

1755. July 6.

FORBES of Culloden and Others, *against* The REPRESENTATIVES of DAWSON of Hempriggs.

No 13.  
An adjudication found null; the decret of constitution having proceeded on a general charge to enter heir to a father, instead of the grand-father, who had been the proper debtor.

IN the ranking of the creditors of Clava, it was *objected* to an adjudication, That it proceeded upon decreets of constitution taken against an infant grandson, upon a general charge to enter heir, not to his grand-father, who was the debtor, but to his father, against whom the debts had never been constituted.

*Pleaded* for the adjudger, That the summons of constitution did particularly set forth the grounds of debt, viz. bonds and bills granted by Hugh Rois of Clava, in the 1716; and though, by mistake, he is called the defender's father, whereas truly he was his grand-father; yet, as both were of the same name, that erroneous addition, with respect to the relation he stood in to the defender, cannot hurt the diligence, he being sufficiently described as granter of the bonds and bills;