

(ALLOWANCE and ABBREVIATE.)

By the registration of the apprising; or, which is the same thing, the allowance, which was the interposition of the Lords authority; whereas, in an adjudication, the Lords decern against the superior; which, therefore, is of authority, equal with the abbreviate, to warrant the charge; and, therefore, though an adjudication, in implement, without an abbreviate, is not good, in a competition; yet, as it denudes the granter, horning ought to proceed, upon it, against the superior.

But, then, it was further observed, That great inconvenience would arise, to purchasers, should it be found, that horning could proceed against superiors, where there was no abbreviate; as it was the only record of the adjudication. True, it occasions no inconvenience to other adjudgers; for still, in competition with these, the adjudication is ineffectual, without an abbreviate; but, as the want of an abbreviate is no defect, in competition with voluntary purchasers, and that a charge against the superior is such a step of diligence, as saves, to the adjudger, his preference to a posterior voluntary right; posterior purchasers would be rendered very insecure, could horning proceed where there was no record of the adjudication.

And, on this ground, merely, it was, that, upon a vote, it carried, That the Ordinary should refuse the bill of horning.

*N. B.* At any rate, there is a defect, in the security, from the records, in the case of adjudications; there being no record of the charge against the superior; though it would be still greater, were there no record of the adjudication, which, at least, leads to enquire, whether the superior has been charged.

*Fol. Dic. v. 3. p. 10. Kilkerran, (ADJUDICATION.) No 10. p. 6.*

1764. June 21: JOHN SIBBALD, Supplicant.

JOHN SIBBALD, flesher, and convener of the trades in Cupar, applied, to the Court, by an intimated petition, setting forth, That he had raised a summons of adjudication, on two bills, against John Campbell, vintner in Cupar; and had, on the 6th of March last, obtained decret, from Lord Edgefield, Ordinary: That an adjudication, at the instance of another person, had been led against Campbell, on the 9th March, 1763; and the abbreviate of it duly recorded on the 19th of April, thereafter.

That Campbell, to disappoint the petitioner of his *pari passu* preference with the other adjudger, the year and day of whose adjudication was on the point of expiring, when the petitioner's was decerned in, preferred a representation, praying the Lord Ordinary to recall the decret; or, at least, to stop execution, till he was heard, on certain defences; which his Lordship refused, on the 10th of March.

That, immediately upon this, the petitioner caused write out the extract of the decret of adjudication, to be signed by the Clerk, and the abbreviate to be signed by the Lord Ordinary; both which were produced.

No 3.

No 4.

A Lord Ordinary having died, after pronouncing decree of adjudication, but before the extract was signed by the Clerk, or the abbreviate was signed by his Lordship; a remit granted to a new Ordinary, to sign the abbreviate, which was allowed to be recorded, though without the 60. days.

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No 4.

The Lord Ordinary having died before signing the abbreviates, and the 60 days, allowed for recording them, being now elapsed, since the date of the decret of adjudication, this application was necessary, that the petitioner's *pari passu* preference, with the first adjudger, might be secured to him: which, he hoped, the Court would think reasonable; as it was not owing to the neglect of him, or his doers, that the abbreviate had been recorded in the ordinary time. He, therefore, prayed their Lordships to remit, to any of their number, to sign the abbreviate, to have the same effect, as if his Lordship had been the pronouncer thereof himself; and to appoint the Clerks of the bills to receive and record it, as if it had been duly presented to them, within 60 days of the date of the decret, for that purpose; or to grant him such other relief, to preserve his preference, as their Lordships should think just.

THE LORDS remitted to Lord Pitfour, in place of Lord Edgefield; with power, to his Lordship, to sign the abbreviate, and to allow the decret of adjudication to be extracted, and the abbreviate recorded; reserving all objections to any party, having interest, against the validity of the said adjudication, and all answers to such objections, as accords.

*Pet. D. Grene.**Fol. Dic. v. 3. p. 11. Fac. Col. No 138. p. 319.*

1774. November 22. JEAN SMELLOME, Supplicant.

No 5.

Abbreviates, not recorded within the 60 days, may still be recorded, by warrant of Court.

THE petitioner set forth, That, upon the 29th June last, she obtained decret of adjudication, before this Court, against Thomas Beveridge, only son of the deceased Alexander Beveridge, writer in Dundee: That the foresaid decret of adjudication was duly signed and extracted; and two abbreviates thereof were also signed by Lord Pitfour, Ordinary, who pronounced the same; but, by the inadvertency of the petitioner's doer, the abbreviate of said decret was not recorded within the sixty days, appointed by regulations 1695, art. 24.; by which omission, the petitioner's diligence is, in so far, incomplete; and, therefore, praying the Court to grant warrant for recording the abbreviate of said decret of adjudication, conform to the practice in similar cases.

THE LORDS 'granted warrant accordingly.'

*A& C. Boswell.**Fol. Dic. v. 3. p. 11. Fac. Col. No 139. p. 366.*

(See REGISTRATION.)