the funds *in medio* for any purpose but that of the trust. An executor confirming holds the subjects: 1*st*, For creditors; 2*d*, For legatees; 3*d*, For the nearest in kin. The statute 1695 has nothing to do with this case. When the nearest in kin abstains, it is in the power of his creditors to take up the subjects *in medio*: but this must not be done too rapidly; it must be after a year. The statute does not relate to the case of subjects already taken up by confirmation.

KAIMES. The case of *Crichton*, resorted to, was ill judged.

On the 28th November 1781, "The Lords preferred Benjamin Bell;" adhering to the interlocutor of Lord Kennet.

Act. D. Armstrong. *Alt.* A. Crosbie.

1781. *December* 8. JOHN, EARL of CAITHNESS, *against* BENJAMIN SINCLAIR of STEMPSTER.

ADJUDICATION.

First effectual Adjudication.

[*Fac. Coll. IX.* 120; *Dict.* 268.]

MONBODDO. I learnt, half a century ago, that the heir was *eadem persona cum defuncto*, and I do not choose to unlearn that. This adjudication is for a personal debt, though secured by infeftment; and so the exception of the Act of Parliament, as to adjudications on *debita fundi*, will not apply. It is said that here the adjudication is converted into a security; but, as it is held as a security for part of the penalty, it is still an adjudication.

BRAXFIELD. There is nothing in the specialties. An adjudication, led on the personal obligation, is perfectly good, and will be effectual for the purposes of the Act 1661. The adjudication, although restricted, is still an effectual adjudication. There is more difficulty as to the other point. In the course of 120 years, no example has occurred like the present case; so that the question is new. If an adjudication led against a predecessor, at the distance, perhaps, of fifty years, is to be the first effectual adjudication, creditors would immediately set about tearing the estate to pieces. No action can proceed against the heir within the *annus deliberandi*. The creditors have no method of carrying on diligence during that space; and it would be a solecism in law to say that the adjudication against the predecessor should regulate the interests of the creditors of the heir, while, at the same time, those creditors cannot stir. The natural construction of the statute is, that it supposes all the adjudications to be led against the same person, and all the debts are held, *fictione juris*, to be comprehended under one adjudication.

KENNET. Much ingenuity has been shown on the part of the petitioner, the Earl of Caithness. It was in the view of the legislature to introduce, as much as possible, a *pari passu* preference. I doubt as to the heir having it in his

power to plead on the *annus deliberandi*, so as to prevent adjudications from being led. All objections will be reserved *contra executionem*, and the heir is not hurt. He may renounce *qualificate*, and yet may take up the succession afterwards.

PRESIDENT. I think also that the Court will interpose, and not suffer the heir, by pleading the *annus deliberandi*, to vary the preferences of creditors. If Lord Braxfield's doctrine were just, it must have occurred in some ranking or other. The purpose of the law was to bring in those adjudications which could have competed, had it not been for the maxim, *prior tempore potior jure*, but not to introduce adjudications which before could not have competed at all.

MONBODDO. A first adjudication cannot pass during the *annus deliberandi*, but a second may.

ALVA. The first effectual adjudication is that which is effectual against the *hæreditas*, not against the *persona*.

On the 8th December 1781, "The Lords found that Sandside's adjudication must be held the first effectual adjudication;" adhering to Lord Monboddo's interlocutor.

Act. Ilay Campbell. *Alt.* D. Rae.

Diss. Braxfield; *non liquet*, Kaimes, Ankerville.

N.B. The rest of December 1781 consumed in long hearings on proofs.

1782. *January* 16. TIMOTHY LANE *against* WALTER CAMPBELL of SHAWFIELD.

GROUNDS AND WARRANTS.

Disconformity in Warrants of Adjudication, appearing on production, after twenty years, not challengeable.

[*Fac. Coll. IX.* 38; *Dict.* 5179.]

BRAXFIELD. As long as a creditor keeps up an adjudication as a debt, he is obliged to produce the grounds of the adjudication; but, after twenty years he is not bound to produce the warrants. The Court never made any difference between general and special charges and steps of proceeding. Were any difference to be made, the charges ought rather to be produced, because they are part of the progress; and the creditor has less reason to complain, because he is in possession of them, although he is not of the steps of procedure. After twenty years, *omnia præsumuntur solenniter acta.* There is another question, Whether objections may not be made against warrants, if *produced?* If the creditor produces them, objections may be made; because, by producing them, he is held to assert that they are true warrants. But the present case is different. The objector is not entitled to go to the record to search out papers,