

No 40.
 Executor *qua*
 nearest in kin
 to his ances-
 tor.

In this action, he *contended*, that although he did not propose to represent his father and brother *passive*, he was not bound to produce a renunciation as heir to them, because he was *in cursu* of confirming himself executor to both, in which character alone he would be able to discuss the charger's claim with safety: That as no inventory of his father's succession had been made *intra annum deliberandi*, he could not now enter heir to him *cum beneficio*; a hardship which had been occasioned by no fault of his, as his brother Sir William had survived his father more than a year: That if, in his character of executor, he should establish, that the charger's claim was ill founded, his right to insist either for a decree against him, or for his renouncing, would be at an end; whereas, if he were obliged *in hoc statu* to give in a renunciation, it would be in the charger's power, after getting a decree *cognitionis causa*, to attach by adjudication any heritage belonging to the late Sir Charles, although it should afterwards appear that his claim against him was ill founded.

The LORD ORDINARY found, 'That the circumstances of the defender being decerned executor *qua* nearest in kin to his deceased father and brother, does not afford any ground for exempting him from being subject to the ordinary course of law;' and therefore 'he assigned a day for him to give in a renunciation.'

A reclaiming petition for Sir Charles was refused without answers.

Lord Ordinary, *Dreghorn*.
 Clerk, *Home*.

For the Petitioner, *Dean of Faculty, D. Douglas*.

R. D.

Fol. Dic. v. 3. p. 258. Fac. Col. No 9. p. 19.

1793. July 10.

JAMES and WILLIAM BEVERIDGE *against* ELIZABETH CRAWFORD and THOMAS COUTTS.

No 41.
 An adjudication on the trust-bond of an heir apparent, granted for the purpose of making up a title, in order to reduce a disposition, is competent, although the disponee be infert.

THE late Colonel Crawford conveyed the estate of Crawford-land to Thomas Coutts, by a disposition, of which Mrs Elizabeth Crawford, the heir at law, proposed to bring a reduction *ex capite lecti*. As a preparatory step, she granted a trust-bond to Messrs James and William Beveridge, upon which, after raising letters of general and general special charge against her, and after Mr Coutts had taken infertment on the disposition in his favour, they brought a process of adjudication, wherein Mr Coutts appeared, and

Objected: As the lands are not *in hereditate jacente* of her predecessor, Mrs Crawford cannot be served heir at law to him in them, nor can her creditors lead an adjudication against them. She is indeed possessed of the faculty of bringing a reduction of the disposition and infertment excluding her, and that faculty alone her creditors can adjudge, Erskine, b. 3. tit. 8. § 100.; 1769, Tyson against Simpson. See APPENDIX.

Answered; An adjudication of the faculty, and any settlements Mrs Crawford might make in the mean time, would be nugatory, if she should die before completing her titles by service, or by the mode now proposed, which cannot hurt Mr Coutts, as the estate will be adjudged *tantum et tale*, as it stands in her person. The case of Tyson is not collected, and seems to have passed of consent.

No 41.

Observed on the Bench; As Mrs Crawford is entitled to serve heir to her predecessor, the adjudication must be equally competent, and she ought to be at liberty to vest such a title in her person as may enable her to make a settlement.

THE LORDS, on advising minutes of debate, 'adjudged.'

Lord Reporter, *Swinton*.
Clerk, *Sinclair*.

For Mr Coutts, *Tait*.

Alt. *R. Craigie*.

D. D.

Fol. Dic. v. 3. p. 259. Fac. Col. No 71. p. 155.

SECT. V.

Privilege of selling the predecessor's estate by a public auction.

1733. February 28. BLAIR *against* STEWART.

THE privilege competent to apparent heirs by act 1695, to sell the predecessor's estate at a public roup, found competent, notwithstanding the pursuer had behaved as heir, and become thereby liable to all the debts of his predecessor. See APPENDIX.

No 42.

Fol. Dic. v. 1. p. 359.

1750. December 14. Sir JAMES HAMILTON Supplicant.

THE estate of Glenhove was sold judicially at the instance of the apparent heir, and purchased by Sir James Hamilton, who gave for it a sum exceeding the debts charged upon it; and having paid the creditors, and the residue of the price to the pursuer, applied for having his bond delivered up: Whereupon it was deliberated among the Lords, whether the heir ought to have taken the price without having made up a title, and what that title ought to have been.

No 43.

An apparent heir pursuing a sale of his predecessor's estate, needs not make up titles before he can receive the residue of the