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'the complainer has ſundry actions to intent at his inſtance, as well before the 'Lords of Seſſion, as other inferior judges, &c.' *Ergo*, a decreet *cognitionis cauſa*, before the ſheriff, upon the heir's renunciation, is valid. And, of conſequence, the ſheriff muſt have a power to put ſuch a decreet in execution, in the only manner poſſible; which is by an adjudication *cognitionis cauſa*. Nor is this an extenſion of the power, which the ſheriff has by the common law. By the act 36, Parl. 1469, it appears, that the ſheriff, after pronouncing decreet upon the brieve of diſtreſs, proceeded, by his own authority, not only to poind the moveables, but alſo to appriſe the land.

With regard to the *ſecond* point; what ſettled my opinion, was the caſe of a purchaſer entering into poſſeſſion upon a diſpoſition, containing procuratory and precept, without actual infeftment. The lands lie within one county, and the purchaſer dies in another county, where he had his domicile. It appears evident, in this caſe, that the ſheriff, within whoſe juriſdiction the lands lie, is the only inferior judge competent in this caſe to pronounce a decreet of adjudication *cognitionis cauſa*; for the diſpoſition, which has no other operation or effect, than merely to be a title to the lands, cannot be conſidered as a ſeparate and independent ſubject, to be attached by any ſort of execution, but that which affects the land. In general, title-deeds are not a ſubject for execution. The land is taken in execution, which belongs to the debtor; and the ſame right is conveyed to the creditor, which the debtor had, complete or incomplete; and with the land, the debtor's title is conveyed, as an acceſſory, of whatever nature the title be. The point would be more doubtful, in the caſe of an obligation to grant infeftment without a precept. (*See* JURISDICTION.—SASINE.)

Select Dec. p. 65.

ADJUDICATION IN IMPLEMENT.

1663. *June* 24. M'DOWGAL *againſt* LAIRD GENTORCHY.

No 1.
In an adjudication in implement, the ſuperior is not obliged to receive the adjudger, unleſs he inſtruct his author's title.

M'NEIL having diſponed certain lands to M'Dowgal, wherein he was heir apparent to his goodſir's brother, obliged himſelf, to infeft himſelf as heir therein, and to infeft M'Dowgal; at leaſt, to renounce to be heir, to the effect M'Dowgal might obtain the lands adjudged; whereupon, M'Dowgal having raiſed a charge to enter heir, M'Neil renounces; and thereupon, M'Dowgal craves the land to be adjudged; and Glentorchy decerned to receive and infeft him.—Glentorchy *alleged*, That he could not receive him, becauſe he had right to the property himſelf; unleſs the purſuer condeſcend and inſtruct his authors (in whoſe place he

No 1.

craves to be entered,) had right.—The purſuer *anſwered*, That he needed to inſtruct no right; nor was he obliged to diſpute the ſuperior's right; but craved the ordinary courſe, to be entered, *ſuo periculo*; with reſervation of every man's right, and the ſuperior's own right, as is ordinary in appriſings and adjudications.—The defender *alleged*, That albeit that was ſuſtained in appriſings, where the ſuperior gets a year's rent; and though it might be allowed in ordinary adjudications, proceeding upon a liquid debt, *favore creditorum*; yet not in ſuch a caſe as this, where the vaſſal's apparent heir diſpones, and obliges himſelf to renounce, of purpoſe to charge his ſuperior.

THE LORDS found no proceſs, till the purſuer inſtructed his author's titles; but an infeftment being produced, he was not put to diſpute the validity thereof, in this inſtance. (*See Bankton, v. 2. p. 233.*)

Stair, v. 1. p. 193.

1666. *February* 8. CRUICKSHANKS *against* LORD FRASER.

No 2.
The aſſignee to an heritable bond, charged the heir to enter, and to grant procuratory. The aſſignee obtained decree, charged with horning, and denounced; and inſiſted for adjudication. The adjudication ſuſtained without any renunciation.

THE clauſe of warrandice, contained in the end of the tack, whereby the granter was obliged to warrant the ſame, weighed much with the Lords. There being a bond of 6000 merks, granted by the Lord Fraſer to Robert Cruickſhanks, containing precept of ſaſine, whereupon he is infeft; the ſaid Robert, having aſſigned the ſaid bond to David Cruickſhanks, who was never infeft during the cedent's lifetime; the ſaid David charges the apparent heir of the ſaid Robert to enter heir, to the effect he might diſpone and infeft the aſſignee in the ſaid ſum; and thereupon obtains decree againſt him, as lawfully charged to enter heir; whereupon there was a charge of horning and denounciation, and now purſues an action of adjudication of the foreſaid bonds and ſums; in which action, the Lord Fraſer is likewiſe called, who is willing to make payment, ſo far as a valid right is eſtabliſhed in the perſon of the purſuer.—It was *alleged*, That an adjudication is not *habilis modus*, for eſtabliſhing the right of the foreſaid ſums, and bond, in the perſon of the purſuer, in ſo far as adjudications proceed, allenarly in ſuch caſes where parties renounce; whereupon *hæreditas jacens* is adjudged; but, in this caſe, there is a decreet againſt the apparent heirs, as lawfully charged, which conſtitute the party charged perſonally debtor; whether in a ſum of money, or in *facto preſtando*. So that in law he cannot be denuded by adjudication, no more than if he had been retoured to his predeceſſor; but the legal manner is, that the purſuer inſiſt againſt the apparent heir, as lawfully charged to enter heir, and libel *alternative* to fulfil the foreſaid aſſignation, or to pay him a liquid ſum; ſo that if the apparent heir renounce, he may adjudge; and if he do not renounce, he may appriſe for the ſums contained in the decreet; either lands, or heretable bonds.——THE LORDS repelled the alledgeance; and ſuſtained the adjudication, without a renunciation, as being conſonant to the daily practice, there being a decreet recovered, as lawfully charged to enter heir; and the party againſt whom, being ſufficiently diſcuſſed.

Fol. Dic. v. 1. p. 4. Newbyth, MS. p. 56.