

(Pafs periculo petentis.)

No 10. *frustra fit per plura*, and only accumulates expences, and forces all Hadden's other creditors to adjudge: And you have no prejudice, seeing there is none before on this subject. The Lords considered it was hard to put creditors to debate *in initio* their authors or debtors right, which might be abstracted or concealed; and therefore they may adjudge at their peril, whatever they suppose belong to their debtor; and afterwards, if you have a right exclusive of mine, if I by incident diligences cannot recover what may elide it, then you'll be preferred. Others thought it extravagant to let him adjudge other men's lands, under the pretence of being his debtors; though it is an usual practice, where lands have been sold off many years ago by my predecessor; yet I the apparent heir will grant a bond, whereon adjudication may follow against me, and thereon I may call for reduction of these ancient rights; only, in Inverebry and Forbes of Tulloch's case, against Ballogie and others, 7th February 1699, (No 9. b. t.) the Lords found he behoved to adduce some adminicles of his contingency in blood, and of his predecessors being heritors of that land, being *in re antiqua*.—THE LORDS here refused to take in the reduction summarly, especially Stobs being minor, and therefore adjudged, reserving all Stobs's defences *contra executionem*.

Reporter, Mersington.

Fol. Dic. v. 1. p. 12. Fount. v. 2. p. 98.

1707. March 19.

THOMAS BUCHANAN of Sandfide, *against* The MARQUISS of MONTROSE.

No 11.

Adjudication is led on an apparent heir's bond. A third party offers instantly to show, that the heir's interest in the estate is excluded. The adjudication passes, reserving that party's interest *contra executionem*.

THOMAS BUCHANAN having obtained a decret of adjudication of the estate of Buchanan, upon a bond granted by Janet Buchanan of Leny, apparent heir to the deceased Laird of Buchanan; the Marquis of Montrose craved it might be stopped, in respect he was content instantly to debate and exclude the apparent heir's interest in that estate.

*Answered* for Sandfide, 'Tis a novelty to stop a decret of adjudication at the instance of a third party upon pretence of excluding the debtor's right: For an adjudication is the only title whereby the creditors of an apparent heir can quarrel third parties pretences, or force a production of their rights. Yea, the debtor himself has not been allowed to propone defences to exclude adjudication, and hinder completing of the diligence: Much less can any third party pretend interest; and if it were otherways, it would be very inconvenient to creditors whose diligences are preferred according to dates.

THE LORDS allowed the adjudication to go out, reserving the Marquis's interest *contra executionem*.

Fol. Dic. v. 1. p. 12. Forbes, p. 156.