(FORMALITIES of the DILIGENCE.)

1710. *December* 20.

WILLIAM BAILLIE, Wright in Edinburgh, *against* JANET CUNNINGHAM, Relict of Thomas Porteous, Merchant there.

No 5.
An appriſing reſtricted, becauſe the execution did not bear, that a copy was *affixed* upon the market croſs, but only, that it was left there.

IN the proceſs of declarator of expiration of the legal of an appriſing of ſome houſes in Edinburgh, belonging to the deceaſed Thomas Porteous, at the inſtance of William Baillie, againſt Janet Cunningham, relict of Porteous; the LORDS ſuſtained this *objection* againſt the appriſing, That it did not bear a copy to have been affixed upon the market croſs, but only, that a copy was left there, relevant to hinder the legal to expire, and take off the accumulations, and reſtrict the appriſing to the principal ſum, and annualrents, due to the appriſer.

Forbes, p. 457.

1736. *February* 18.

ELIZABETH REID, *against* JOHN HENRY of Auchinloich, and his SON.

No 6.
In an adjudication againſt three heirs-portioners, one of them was not ſpecially charged. The adjudication reſtricted.

THE ſaid Henrys, having led an adjudication againſt the three daughters of the deceaſed Andrew Reid, as heirs-portioners to him; during the currency of the legal, Elizabeth, the youngeſt, brought a reduction, after both her ſiſters died, of the adjudication, upon this ground, That the ſpecial charge was only executed againſt her and her eldeſt ſiſter.

Anſwered: That, as it was regularly led againſt two of them, whoſe proportions of the eſtate were more than ſufficient to anſwer the defender's debt, it ought to be ſuſtained, as to the accumulations: For, if the decreet had been taken againſt two of them, without calling the third at all, it would have been a valid ſecurity for the debt; and, therefore, the not citing one of them ought not to free the others of what they were liable for.

Replied: The adjudication, againſt the ſiſter who was not charged, is informal; ſeeing it was adjudging from a perſon who had no right: Which objection muſt affect the whole adjudication, even as to thoſe who are charged; becauſe, the decreet of conſtitution being againſt all of them, the adjudication has gone out againſt the ſhares of the land belonging to them that were ſpecially charged for payment of the whole debt; whereas, it ought only to have been for their proportion, after deducting the ſhare of the heir not charged: In ſhort, a decreet againſt two could only proceed for two-thirds of the debt; whereas, this adjudication, being for a third more, is irregular.

THE LORDS ſuſtained the reaſon of reduction of the decreet of adjudication, that the ſame is deduced againſt three heirs-portioners, and only two of them charged to enter to their predeceſſor, relevant to reſtrict the adjudication to a ſecurity for the principal ſum and annualrents.

Fol. Dic. v. 3. *p.* 7. *C. Home, No* 21. *p.* 45.