

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