

It was by several of the Lords thought, that though an adjudication upon a *cognitionis causa* did carry such bygoncs, as affecting the *hereditas jacens*, and carrying every thing which would have been carried by the heir's service; yet where the adjudication proceeded upon a constitution and special charge, it carried only right to the particular subject adjudged, and of course to the mails and duties from its date.

That such only was the effect of comprisings before the 1672; and the case must be the same of adjudications, which are come in place thereof. That there is no difference in this respect between an adjudication on a special charge on the apparent heir's proper debt, and where it is on the predecessor's debt; for wherever a constitution is obtained, the debt becomes the proper debt of the apparent heir, and it would be singular, that an adjudication for the proper debt of the apparent heir should carry bygoncs due prior to its date.

Notwithstanding, the contrary opinion prevailed; and it was found, "that the adjudication on a constitution and special charge, carried the bygoncs since the death of the predecessor."

There appeared to be no habile method of affecting such bygoncs, but by adjudication; wherefore, though a comprising before the 1672 might not carry bygoncs, but that an extraordinary adjudication was necessary to carry these, yet now, that adjudications are come in place of comprisings, it was thought that no more was necessary than one adjudication to carry both the land and bygoncs.

*Kilkerran, p. 4.*

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1740. Nov. 6. THOMAS WILKIE *against* THOMAS M'NEIL.

This case is reported by Elchies (*Pactum Illicitum*, No. 11.) and by C. Home, (p. 259.) Lord Kilkerran's note of it is as follows:—

"Found there is sufficient evidence that the charger and suspender were partners in the bargain, as to the brandy purchased from Wallace; and find that the delivery by Wallace to Wilkie was equal to delivery to M'Neil, and, therefore, repel the reason of suspension, and remit to the Ordinary to hear parties upon the abatement obtained by Wilkie from Wallace.

"In the view in which the Lords took this case, viz. that M'Neil did not buy from Wilkie, but was assumed partner with him, neither had the late act of parliament any thing to do with the case, nor the general point in law that before delivery, the buyer would not be liable, which last was the ground the Lord Ordinary had gone upon, as he explained himself.

"But then the President moved that point determined in the case of Morison in St. Andrews; and had he met with encouragement from his brethren, seemed inclined to have it found, that all bargains of whatever kind, for rum, brandy, &c. were *pacta illicita*, and afforded no action; but this not being relished was dropt."

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1740. December 17. AGNES and JANET TRENTS and OTHERS, *against* the EARL OF LAUDERDALE and SIR ROBERT DICKSON.

THAT the by-gone annual-rents upon an adjudication belong to the heir of the adjudger, and are carried by a service, was determined in the case of *Wyliccleugh*,