

No. 81. 1767. *July.* LORD ELIBANK *against* BAILLIE and Others.

One having a right of security over an heritable property is entitled to insist that the subjects be not destroyed, and if destroyed, that they shall be replaced.

*Fac. Coll.*

\* This case is No. 7. p. 7241. *voce* IRRITANCY.

1771: *January 24.*

JOHN WADDEL, Eldest Son and Heir of John Waddel of Knownoble, and his Tutor and Curator, *against* MAY LAURIE, Spouse of George Boyd, and him for his Interest.

No. 82.

Objection to the title of a pursuer of a ranking and sale, removed by the concurrence of the party having interest.

Alexander Brownlie having contracted various debts, his creditors severally obtained adjudications of his lands. John Waddel deceased, one of them, in 1754, obtained an adjudication and got infeft. William Laurie and certain other creditors assigned their debts to Alexander Waddel and John Davidson: Davidson died; and thereafter Lilius Aitken, his relict and executrix, joined in a conveyance with Alexander Waddel, the surviving trustee, of the debt due to Laurie, to Jean Law, Laurie's relict. In 1756, Alexander Waddel likewise assigned to Jean Law, in trust for his own behoof, an acceptance of Alexander Brownlie for 500 merks Scots, with power to her, "her heirs and donatars, to call, charge, and sue for, the sums before assigned, decreets to recover, and every thing to do, &c." In 1755 Jean Law got herself decerned executrix dative to her husband Laurie, but did not confirm; in 1758 she obtained decret of constitution for payment of the above sums so conveyed; and in 1759, she also adjudged the lands of Knownoble.

Jean Law having died, May Laurie her daughter and heir in general, served and retoured to her mother, on that title brought a process of ranking and sale of the estate of Knownoble; when an objection was stated to her title by John Waddel, son and heir of John Waddel deceased, who had obtained an adjudication, and was infeft in the said lands.

Jean Law's adjudication had, it seems, proceeded upon four different grounds of debt. As to the three first of them, it was stated, that the constitution and adjudication had been obtained upon a decret dative, but without confirmation; and to the fourth, viz. the bill due to Alexander Waddel, assigned to Jean Law in trust, it was objected that the trust was at an end when the adjudication was led.

The Lord Ordinary sustained "the objection, that the constitution and adjudication proceeded on a decree dative without confirmation." Thereafter the Court, upon advising a petition and answers, "sustained the objection to the pursuer's title, so far as the said title is founded on the bond and bill to William Laurie, upon the medium solely, that no confirmation of these debts is produced in the