

ADJUDICATION *contra hæreditatem jacentem.*

1626. December 20.

— against Scot.

IN an action, at the instance of _____, creditor to umquhile Scot of Bonytown, against one Scot; as lawfully charged to enter heir to the defunct, for registration of a bond; the defender compearing, and offering to renounce to be heir; whereupon, the pursuer desired sentence to be given against him, *cognitionis causa*, to the effect he might seek adjudication, as use is, in such cases: Compeared in this process, another creditor of the said Scot of Bonytown; and alleged, that this sentence, upon the defender's renunciation to be heir, could not proceed in the pursuer's favours; thereby to seek adjudication of the defunct's lands in his prejudice; seeing he offered to prove, that the defender had behaved himself as heir to the defunct, by intromitting with his father's lands and goods; and so could not renounce to be heir to him. This allegiance was repelled, seeing when this creditor should pursue this defender for his debt, he might insist against him, or qualify him to be heir; as he might best do of the law, which could be no hindrance to this pursuer, to prosecute all lawful diligence competent to him of the law, upon the defender's renunciation to be heir; for this diligence of pursuit, moved by the pursuer, *qui sibi vigilavit*, could not be stayed by this allegiance of this creditor, who had not provided himself, so as to seek and use the like diligence for recovering of his debt.

This decision was followed January 22. 1629; Mr. Frederick Carmichael *against* the Laird of Kinraig and his creditors, in this same manner as is here marked.

Act.

Alt. Burnet.

Clerk, Gibson.

Fol. Dic. v. 1. p. 3. Durie p. 249.

1528. March 14.

CAIRNCROSS *against* LORD DRUMLANRIG.

ROBERT CAIRNCROSS charged Jean and Marion Scots, to enter heirs to their father William; and upon their renunciation, he craved adjudication of a tenement of land in Hawick, pertaining to umquhile William.—Compeared the Lord Drumlanrig, and *alleged*, That he was heritably infeft in the barony of Hawick, whereof the town was a part; and therefore, unless the pursuer would verify, that the said William was infeft in the tenement holden of him, it could

F 2.

No 1.

A creditor was allowed adjudication *cognitionis causa*, upon an apparent heir's renunciation, altho' another creditor offered to prove, that the apparent heir had behaved as heir.

No 2.

In a process of adjudication *contra hæreditatem jacentem*, the pursuer found not obliged to instruct his title, but the decree passed, *salvo jure*.