(Pafs *periculo petentis.*)

1675. *November* 30. KINLOCH *against* BLAIR and STRACHAN.

No 8.
In an adjudication, the debtor not appearing, the Lords decerned, reſerving all objections; although the ſuperior appeared, and alleged, the vaſſal had been *ab ante* denuded.

DAVID KINLOCH of Gourdie having obtained decreet againſt James Strachan, as repreſenting his father, for payment of ſeveral debts of his father's; purſues now an adjudication againſt the ſaid James Strachan, and Mr James Blair his ſuperior. It was *alleged* for Mr James Blair, abſolvitor, becauſe the ſaid James Strachan is denuded by a reſignation of the lands, in favours of Mr George Blair his ſuperior *ad perpetuam remanentiam*. The purſuer *anſwered*, *Non relevat* againſt the adjudication, which has always been granted *periculo petentis*, and the purſuer cannot be obliged to diſpute his debtor's right till he obtain adjudication, and thereupon recover the evidents. 2*do*, The purſuer has raiſed reduction of Mr George Blair's right, as being after his diligence, and betwixt conjunct perſons, without an onerous cauſe. It was *replied* for the defender, That albeit the Lords were accuſtomed, in the caſe of old adjudications, upon the renunciations of heirs, to grant adjudications to creditors, of all rights they libelled *periculo petentium*, becauſe the heir having renounced could not compear; but this adjudication is not upon a renunciation, but is upon the late act of Parliament in place of appriſing. And albeit meſſengers, who were judges in appriſings by commiſſion, could not diſcuſs defences; yet now the Lords themſelves being the only judges in theſe new adjudications, may and ſhould diſcuſs the lawful defences of parties intereſted, eſpecially when it makes no delay, whereby the purſuer might be poſtponed to the diligence of other creditors, as in this caſe, where there are no other creditors competing. It was *duplied* for the purſuer, That he is not inſiſting upon a ſpecial adjudication of a parcel of land effeiring to his debts, but in a general adjudication, in reſpect the heir compears not, and produces his rights, and conſents to adjudge a parcel; and therefore, this general adjudication is in the ſame caſe as the old adjudications were. It was *triplied* for the defender, That, compearing and producing his right, denuding the common debtor, and conſenting to diſcuſs the purſuer's reduction ſummarily by reply, when there is no competition of other creditors, he ſhould be heard; otherwiſe all purchaſers may be troubled by ſuch adjudications and infeftments taken in their eſtates, to their diſcredit and prejudice.

THE LORDS adjudged, ſeeing it was but a general adjudication, requiring no probation; but, before extract, ordained the reduction to be diſcuſſed, ſeeing there was no competion, or any neceſſity of the common author's rights to be produced.

*Fol. Dic. v.* 1. *p.* 12. *Stair, v.* 2. *p.* 372.

(Pafs *periculo petentis.*)

No 8.

*** This cafe is thus reported by Dirleton:

MR GEORGE BLAIR being called in an adjudication, at the inftance of Kinloch of Gourdie, as fuperior of the lands craved to be adjudged; did *allege* that they could not be adjudged, becaufe they did belong to him by a difpofition and refignation thereupon *ad remanentiam.* It was *anfwered*, That adjudications are now in place of compriſings; and, as fuch debates were not competent againſt compriſings, the time of the deducting of the fame; fo they ought not to be admitted againſt adjudications; feeing compriſers and adjudgers do adjudge or compriſe upon their own hazard: And if the debtor has any right or intereſt, it ought to be adjudged; and if he has none, there is no prejudice to any perſon.

THE LORDS found, That there being no competition of creditors, and no hazard of retarding the purſuer's diligence upon that account; the defender being called, might propone the ſaid defence; and ought not to be put to trouble and charges to appear in any other proceſs, for mails and duties, or removing; eſpecially ſeeing he was content, that if the purſuer had a reduction, as he pretended, of his right, that it ſhould be diſcuſſed preſently; and, though he had no reduction, that what he could ſay againſt his right, ſhould be heard and diſcuſſed by way of reply.

Reporter, *Forret.*

*Dirleton, No* 305. *p.* 151.

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1699. *February* 7. GORDON *againſt* FORBESSES.

No 9.
In adjudication of bonds by apparent heirs, where no notoriety of their predeceſſor's right, and no competition of creditors, adjudication will not paſs without ſome evidence.

MERSINGTON, reported Gordon of Inverebrie, againſt Forbeſſes of Ballogie, Tulloch, and Balflug. Tulloch, as apparent heir to his grand-father, in the lands of Corſinday, and others, grants a bond for 18,000 merks to , who, thereupon charging him to enter heir, and obtaining a decreet *cognitionis cauſa*, raiſes an adjudication. Compearance is made for Ballogie and others, now proprietors, who repeat a declarator they had raiſed, that the lands have pertained immemorialy to them; and they deny his goodfire had ever any right thereto, or that he is the neareſt in blood; elſe any man, on his own bond, may cauſe charge himſelf to enter to ſome of his predeceſſors, in lands they never had right or claim to, and thereupon raiſe improbation againſt the juſt poſſeſſors, open their charter-cheſts, propale their papers, and vex all the country.—*Anſwered*, Adjudications are *judicia ſummaria*, and ought not to be ſtopt on alledgeances that require probation; but the form is, to decern, and reſerve all theſe defences *contra executionem* in the mails and duties, as may be ſeen, 15th