

## No 12.

Adjudication in relief, competent, before payment by the cautioner.

1685. *November.*BURNET *against* VEITCH.

THERE being a query proponed by Mr Roderick M'Kenzie clerk, showing that Robert Burnet writer, being cautioner for Veitch of Dawick ; and, being distressed by registration of the bond, and horning thereon, but had not made payment of the debt ; the said Robert, upon the clause of relief of the said bond, had entered an adjudication of Dawick's lands, that he might come in *pari passu* with other adjudgers. The question being, Whether, (albeit he was distressed, yet not having made payment,) he might adjudge for relief?—THE LORDS found, That he might adjudge ; and that the adjudication was equivalent to an infestment of relief ; and was only to take effect for such sums as Robert Burnet should happen to pay, by virtue of the said distress ; and that from the time of his payment : And therefore, ordained the decret of adjudication to be extracted, bearing the foresaid provision.

*President Falconer, No 102. p. 72.*

## No 13.

The emoluments of the hand-bell of a town, carried by an apprising of the common-good.

1686. *January.*WILSON *against* The MAGISTRATES of Dysart.

AN appriser of the common-good of Dysart, pursuing for the tack-duty of the hand-bell ; it was *alleged*, That these obventions and emoluments being of a moveable nature, did not fall under adjudication.

*Answered* : These are the consequences of a real right, and belong to the pursuer ; as the profit of fiars would fall to the compriser of a barony.

THE LORDS decerned in favours of the adjudger.

*Fol. Dic. v. 1. p. 10. Harcarfe, (COMPRISING.) No 317. p. 77.*

## No 14.

An heritable bond is adjudgeable, even before the term of payment, though no infestment has followed.

1705. *June 26.*ALEXANDER STUART of Torrence *against* WALTER STUART of Pardovan.

WALTER CORNWALL of Bonhard having, upon the 27th of February 1700, granted an heritable bond to George Dundas merchant in Leith, for the sum of L. 10,600, payable at Lammas thereafter, with annualrent, commencing from the preceding Candlemas, and in time coming after the term of payment, upon which no infestment followed ; Walter Stuart of Pardovan, a creditor to George Dundas, did raise summons of adjudication of that money, which was executed 6th July 1700, and obtained decret 20th February 1701. Alexander Stuart of Torrence, another creditor, arrested it 9th July 1700, and obtained a decret of furthcoming upon the 9th July 1701. There arose a competition betwixt these creditors, each of them claiming to be preferred upon his diligence.