

## No 61.

A charge to enter heir in order to adjudge, was sustained, although at the instance of an assignee, whose assignation was posterior; as no execution followed till after the assignation.

1703. February 11.

Competition CREDITORS of ECCLES.

IN a competition between Ker of Moriston and Pringle, Charles Ormiston, and other Creditors to Home of Eccles, Moriston objected against Pringle's adjudication, that it was null and informal, because he being constituted assignee to most of the debts for which it was led, he had raised his charge to enter heir against Eccles before he had got these assignations in his person, and so the charge was *filius ante patrem*. *Answered, 1mo*, He had a debt due to himself, which was sufficient to support the charge, that debt being antecedent thereto; *2do*, Before the charge to enter heir was executed, he had all these assignations in his person, which was sufficient, the giving the charge being the true application of the diligence. *Replied*, They did not quarrel the adjudication as to his own debt, but only *quoad* those conveyed to him. *2do*, The charge being the warrant by which he was charged to enter heir, and these assignations being posterior to the date of the charge, they were unwarrantable and destitute of a warrant; and so the Lords found, 15th November 1666, Abercrombie, marked both by Stair and Dirleton, though Dirleton subjoins another between Kennedy and Hamilton to the same purpose, yet the first speaks only of an assignation taken after the summons was executed, see No 47. and No 48. p. 13277. The Lords divided on the question, five against five, and the President for the time did cast the balance by finding the adjudication not null, though the charge preceded the assignation, seeing the execution on the charge was posterior, and so repelled the objection. *Fol. Dic. v. 2. p. 304. Fountainball, v. 2. p. 179.*

1704. November 22.

LIBBERTON and WELLWOOD *against* JANET PITCAIRN and GEORGE HOME  
Town-Clerk of Edinburgh.

## No 26.

One was, by the condition of a bond, only liable in case he should have intromitted with certain subjects. Adjudication was led on the bond, without previous proof of intromission. The adjudication was allowed to subsist as a security.

THIS was a reduction of Libberton's adjudication, on this ground of nullity. That it was led for a bond of provision of L. 10,000 Scots, bearing this express condition and quality, that he should not be liable in payment, unless he actually intromitted with as much of the heritable and moveable bonds disposed to him, as would extend to the said sum; but so it is, the decret *cognitionis causa* and adjudication proceed without any trial or pobration of his intromission, and so are null; and the offering to prove it now is not sufficient, because, before any sentence could pass, it should have been instructed to the Lords, that the condition was purified; and as there could be no decret for payment till then, so neither could they validly adjudge; for apprisings and adjudications in heritage are equivalent diligences to poidings of moveables, and none will affirm they could have poided on this bond, till the condition was first instructed to have been implemented and purified. *Answered*, The