1731. *December.* DRUMMOND of Gairdrum *against* ALEXANDER JACKSON. No 10.

AN adjudication, upon a decreet *cognitionis cauſa*, is effectual, though the heir happened to be ſerved, and could not validly renounce upon being charged to enter heir.

'Tis no objection to an adjudication *cognitionis cauſa*, deduced before the ſheriff, that there was no abbreviate thereof ſigned by the judge, nor recorded in terms of the articles of regulation 1695; becauſe theſe articles concern the Seſſion only.

*Fol. Dic. v. 1. p. 3.*

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1753. *August* 3.
TRUSTEES of MUNGO GRAHAM'S CREDITORS *against* JOHN HYSLOP.

No 11.
An adjudication, *contra hereditatem jacentem*, may be led before the ſheriff, if the lands be within his juriſdiction.

DAVID Viſcount of Stormonth, anno 1662, granted an heritable bond for 4000 merks, to John Carmichael, and the heirs therein named, obliging himſelf to grant infeftment, 'in all and ſundry his lands, heritages, and others whatſoever, pertaining to him, wherever the ſame lie in this kingdom, for an annualrent of 240 merks yearly, to be uplifted and taken furth of the readieſt mails, profits, and duties thereof, at Whitſunday and Martinmas, by equal portions:' And the bond contains a precept of ſaſine, in the ſame indefinite terms. This bond, upon which infeftment never was expede, was veſted, by progreſs, in Mr Robert Richardſon, writer to the ſignet; who, having died inſolvent, Patrick Chalmers, one of his creditors, having charged the apparent heir to enter, brought a proceſs upon the paſſive titles, before the ſheriff of Edinburgh; and, upon the renunciation of the apparent heir, obtained firſt a decreet *cognitionis cauſa*; and thereafter, October 1701, a decreet of adjudication *contra hæreditatem jacentem*, in the ſame court. And, according to the practice of the ſheriff-court of Edinburgh, an abbreviate of

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your bonds of proviſion are poſterior to my mother's contract-matrimonial; by which a ſpecific ſum of 12,000 merks is the proviſion of the bairns of that marriage, of which I am the only child; and the Lords have found, that obligements to bairns of a firſt marriage, do not hinder a father to do rational deeds, no way immoderate, in favours of a ſecond wife and children of that marriage, as was found 16th June 1676, Catharine Mitchell againſt the heirs of Thomas Littlejohn: And though you have one tye on the father, viz. his natural obligation to provide his children; yet I have another ſuperadded one, viz. the proviſion in my mother's contract of marriage; ſo that I have both a *debitum naturale et civile* on my ſide; whereas the children of the firſt marriage, (their mother having no contract) have only the firſt.—*Replied*, In cognoſcing you to be the only child of the marriage, you are found to be heir of proviſion; ſo after diſcuſſing the other heirs, you are liable *ſubſidiarie* to warrant your father's deed in our bonds of proviſion, though poſterior to your mother's contract, as was found of late betwixt Sir Patrick and Sir Robert Homes. Some were for bringing the children of the two marriages in *pari paſſu*; but the caſe being new, the Lords reſolved to hear it argued in their own preſence. If Suſanna's curators have cognoſced her heir of proviſion, ſhe being ſtill minor, may revoke it, as being to her leſion, if the contract alone will be a good title. (*See* PROVISIONS to HEIRS and CHILDREN, for the caſes above referred to.)