

No. 25. 1740, Feb. 19. SPREULL *against* SPREULL CRAWFURD.

I OMITTED to mark the former interlocutor on bill and answers betwixt these parties, on 17th instant, where a question occurred far from being plain, viz. What is the proper title for reducing an adjudication against an apparent-heir,—whether a service as heir to the person last infest in these lands? We all agreed, that so far as the reduction was founded upon alleged trust for the apparent-heir, no other title was necessary or habile, but a service to him; but as to other nullities, the Lords were divided; and I own I doubted pretty much, especially where the adjudication is not upon a renunciation to be heir, and a *cognitionis causa*, but upon a special charge. However, they sustained the pursuer's title,—against which they now reclaim, and the bill is appointed to be answered, 22d January 1740.—19th February, the Lords adhered.

This case, which is marked 22d January, but should have been the 17th, came again before us by reclaiming bill and answers, as the process was a reduction in common form on nullities, intromission, &c. I thought the question came to the general point, whether an apparent-heir, against whom an adjudication is led on a special charge, can reduce or redeem such adjudication or not? for if he can, then the reversion in him will be carried by a general service; or if none can redeem but one infest in the lands, which is Stair's opinion, p. 400 (417), I was of opinion, that by the several acts of Parliament, particularly in 1540, and the 7th act, Parliament 23, James VI. compared together, the apparent-heir, against whom such adjudication on a special charge proceeds, may redeem, though one against whom an adjudication or a renunciation and decret *cognitionis causa* is led, cannot redeem; and though Stair, p. 400 (417,) says, that the apparent-heir against whom an adjudication on a special charge proceeds cannot redeem, yet the decision he quotes imports rather the contrary; for in the reasoning, it seemed to be supposed, that by the practice he could redeem, and all the question was, Whether after his death, the next heir being infest as heir to the person last infest, might also redeem without serving to the apparent-heir, against whom the adjudication was led? and the Lords found they might.—19th February 1740.

No. 26. 1740, July 16. GORDON *against* SIR GEORGE MAXWELL.

THE Lords found the mistake in the requisition in the date of the wadset, sufficient to restrict the apprising to principal and annualrent. I was of that opinion, but that they should be then accumulated. But it carried otherwise. 2do, They found the taking decret for the ten merks was wrongously appraised for, because there was no obligation to pay it, only it was a burden on the reversion; but that it was likewise usurious, being more annualrent than was due, and this last was found sufficient to annul the apprising *in toto*. But Arniston, though he was for the first interlocutor, yet he was against the last; and 9th January 1741, the last was altered, and the apprising was sustained as a security for the sums truly due.

No. 27. 1740, July 25. ALISON and JEAN MABENS *against* ORMISTON.

ME REFERENTE upon William Seaton Writer to the Signet's suggestion upon a bill of horning, the Lords found, that an adjudger, having a general adjudication, in

possession, may notwithstanding use personal execution by horning, caption, &c. When this was first moved, Arniston, and several others, demurred, who thought that this would depend on the question, Whether apprisers before 1672 could, notwithstanding the possession, use such diligence, and therefore delayed for a memorial, which they got, but did not state the difficulty, and therefore I laid before them such decisions, as I found in Durie, which were all, that a compriser in possession could not use personal execution without renouncing. However, the Lords thought the law was now different as to general adjudications, especially since the act 1672 had specially provided for the case of special adjudications, but without repeating the same provision as to general adjudications: The omission seemed to be *ex proposito*,—and therefore they directed me to pass the bill.

No. 28. 1740, Dec. 5. GEDD *against* BAKER.

AN adjudger having obtained charter and sasine, and entered to possession immediately after adjudication, and possessed more than 40 years. The Lords found that the adjudication could not be quarrelled upon nullities, though he had not possessed 40 years after the legal. But they thought he might declare the adjudication satisfied and paid within the legal any time within 40 years after expiring of the legal, though there was no occasion to give an interlocutor on this point. This interlocutor was unanimous, except the Marquis of Tweeddale, (Arniston absent.) *2dly*, Found that minority must be discounted from the positive as well as negative prescription, (unanimous.):

No. 29. 1741, Feb. 20. YOUNGER CHILDREN OF GUTHRIE, *Supplicants*.

UPON a bill of horning on an adjudication in implement proceeding on a decret *cognitionis causa*, the question was, Whether horning could go without an abbreviate? I gave my opinion as Ordinary, that it could not, because no horning could proceed on comprisings, without being first registrate, and then by the act 1661 without being allowed instead of being registrate, and the act 1672; and the regulations 1696. But at the party's desire (who insisted, that such adjudications needed no abbreviate,) I reported,—and several Lords doubted whether any adjudger (though not in implement) can be forced to take an abbreviate, since the law does not declare adjudications without allowance or abbreviate void and null, but only that they cannot compete with subsequent adjudications,—though they all agreed that an abbreviate was as necessary here as in other adjudications; and the President seemed to be of that opinion; but upon noticing that this adjudication, with a charge, might perhaps be preferable to a subsequent voluntary right, which might make a great blank in our records, it carried to refuse the horning.—*Renitentibus* Drummore, Arniston, Kilkerran, &c.

No. 30. 1741, July 15. SPREULL *against* SPREULL CRAWFURD.

THE Lords found, that Milton could have no benefit by his own fraud, in taking the disposition from his nephew, which was in effect a conveyance of the reversion of his own adjudication, and that therefore the legal is still open. *2do*, That the debts acquired by him were in trust for the behoof of his nephew, and that he must communicate the eases, and that this case falls not under the act 1696. As to this I gave no opinion, but wanted