

(Pais *periculo petentis*.)

common course, as to other reasons *in facto*, requiring a term to prove them ; and refused to discuss even the relevancy of these *incidenter* to stop adjudication, reserving the same *contra executionem*.

Fol. Dic. v. I. p. 11. Forbes, p. 538.

No 5.
received *incidenter*, if instantly verified.

1664. July 22.

ALEXANDER LIVINGSTON *against* HEIRS OF LINE and DAUGHTERS of the
LORD FORRESTER.

ALEXANDER LIVINGSTON, as assignee to a debt, owing by the deceased Lord Forrester, having charged his daughters, and heirs of line, and they renounced ; whereupon he pursues adjudication ; compearance is made for the Lord Forrester, who produced his infeftment, and alleged the lands therein comprehended, could not be adjudged ; because the defunct was denuded thereof before his death ; and, as he could stop the apparent heirs, if they they were craving themselves to be entered heirs to their fathers, so the adjudger, in their place, could not crave infeftment. The pursuer *answered*, The defence was not competent *hoc loco*, and the defender would not be prejudged by any infeftment, or adjudication, if he had sufficient right. And therefore, as in an apprising, he might apprise *omne jus*, that the defunct had, and thereupon be infeft ; so he has the like benefit in adjudication, which has been ordinarily sustained, *periculo petentis*.

THE LORDS sustained the adjudication, as to all right the apparent heirs could have had in the lands, but not as to the property ; and therefore would not discern the pursuer to be infeft ; but sustained the decret of adjudication ; that thereby he may have right to reversions, and clauses resolutive, or other personal clauses ; which they thought would be sufficiently carried by the decret of adjudication, without infeftment, and would not be prejudged by another adjudger, obtainer of the first infeftment ; but this was beside the ordinary course wherein adjudications used always to be granted *periculo petentis*, that thereby *omne jus* may be carried ; and, as in apprisings, it has been ordinarily found, that the superior must infeft the appriser, to complete his legal diligence, albeit the superior instruct, that himself has a right to the lands ; because his receiving of the appriser, in obedience, will not prejudge his right ; and it were unreasonable to force an appriser, or adjudger to dispute the point of right, when all the writs and evidences are in their adversary's hands ; and the creditors being mere strangers ; who upon their apprisings, or adjudications, can only have title to exhibition of the rights, and afterward be obliged to dispute ; but here, the case was notour to many of the Lords, being near the town of Edinburgh, that the Lord Forrester had infeft his goodson in his estate.

Fol. Dic. v. I. p. 12. Stair, v. I. p. 221.

No 6.
Adjudication passes *periculo petentis*, without necessity to instruct the debtor's right.