

1684. February 27. DUNLOP against BROWN.

No 6.

A comprising against a minor, as served heir to his predecessor, found still to subsist, and to be of the nature of an adjudication *cognitionis causa*, when the minor *ex capite minore* rennatis is reponed and renounces.

IN the action of reduction, pursued by Dunlop younger, and his lady Antonia Brown, of a discharge granted to Andrew Lundie, by the said Dunlop, of his omissions as tutor to the said Antonia: THE LORDS found, that Wislaw having comprised from John Brown, as lawfully charged to enter heir to Sir John Brown, his father, for payment of a debt due by the said Sir John; had good interest to allege, that Lundie's comprising was extinct by omissions, as tutor to John Brown; and, that by the decret, obtained against John, as lawfully charged to enter heir to Sir John Brown; the debt became John's debt, and he became personally liable therefor; and so Wislaw might propone compensation upon the omissions which were due by the tutor to the pupil. But the LORDS found, that Wislaw having comprised or adjudged from Antonia Brown, as heir to her father, Sir John Brown; (after the death of the said John Brown, her brother); and she having reduced the service upon minority and lesion; whereby the comprising was of the nature of adjudications, upon a decree *cognitionis causa*; therefore, Wislaw could not compensate the sums contained in the tutor's comprising with the tutor's omissions, during the time of Antonia's tutory; in regard, they found the privilege of making the tutor liable for those omissions, was personal to the pupil, and to her assignees; and so sustained the discharge granted by Dunlop, of the said omissions, and found that the adjudgers could not quarrel the same.

Fol. Dic. v. 1. p. 3. President Falconer, p. 59. No. 87.

1696. December 29. MURRAY against LORD SALINE.

No 7.

Found not to be a nullity in an adjudication *cognitionis causa*, that it had not been allowed.

IN the competition between Murray of Livelands and my Lord Saline, it was found no nullity of an adjudication, that it was not *allowed*, seeing it was after the old form on a decret *cognitionis causa*; and only these adjudications were to be allowed, which came in place of comprisings, by the act of Parl. 1672. And the LORDS refused here, during the dependence, to sequestrate the rents and put in a factor; but recommended to the Ordinary, to bring the ranking to a close; for one may not be dispossessed, unless there be great evidences, that his right is either invalid, or satisfied by partial payments or intromissions.

Fol. Dic. v. 1. p. 3. Fount. v. 1. p. 748.

1709. January 4.

ANDREW KER, Merchant in Edinburgh, against KATHARINE PRIMROSE, Relict of Mr DAVID HERIOT, Advocate.

No 8.

Adjudication, upon renunciation, sustained; although ob-

IN a competition, betwixt Andrew Ker and Mrs Heriot, for the mails and duties of some acres of land in Corstorphine:—THE LORDS sustained an adjudication at her instance, upon her son's renunciation, and a decret *cognitionis causa*, obtain-

ed before an inferior judge, within whose jurisdiction these acres lay ; albeit it was alleged for Mr Ker, That as no inferior judge can discuss the competition of heritable rights, far less are they competent to adjudge them from the debtor to the creditor. And adjudications, upon renunciations to enter heir, were, long after apprisings were warranted by statute, introduced by the Lords of Session, *ex nobili officio*, for supplying the defect of our law, which argues, that they cannot be pronounced by inferior judges. (See JURISDICTION.)

Forbes, p. 297.

No 8.
tained before
an inferior
judge.

1769. December 23.

The CREDITORS of the deceased GEORGE MARSHALL against JAMES HAMILTON of Pencaitland.

IN the competition of the adjudging creditors of George Marshall, it was alleged, that Pencaitland could not come in *pari passu*, with the rest ; because his adjudication, was not within year and day of the first effectual adjudication, obtained at the instance of James Scott, before the sheriffs of Edinburgh, upon a *cognitionis causa*, against the apparent heir renouncing.

Answered for Pencaitland : He ought to come in equally, because his adjudication is within year and day of the first adjudication before the Lords : And no respect could be had to that before the sheriffs ; because it was pronounced, *a non suo iudice* : In so far as the Lords are only proper judges in adjudications, now since the twenty-fourth article of the regulations, ordaining all abbreviates of adjudications, to be signed by the Lord Ordinary ; especially considering, That the rolls and minute-book do properly publish and certiorate the lieges, when there is a course of diligence against a debtor ; and men are not bound to know, nor can know, what is done before inferior judges. *2do, Esto*, such a decret of adjudication, before an inferior judge, were sustained, it cannot be the rule of preference before the Lords, where the form of process requires longer diets, and more days : As in competitions betwixt arresters, the obtainer of a decret of forthcoming in the Session, if he hath not been, *in mora*, will be preferred, conform to the date of his arrestment, to a posterior arrester, obtaining the first decret before an inferior court. And, if it were otherwise, all adjudications would be led before inferior courts, for fear of coming too late, by the more tedious form of the Session.

Replied for the other creditors : The act of Parliament 1661, bringing in adjudgers within year and day, *pari passu*, must, as being a correctory law, be strictly interpreted. The act of regulation, concerns only decreets of adjudication before the Lords : For those before sheriffs, and their abbreviates, can only be subscribed by the sheriff, pronouncer thereof, as was done in this case. *2do*, Whatever may be pretended in the case of forthcomings, constitutions, and the like, before the Lords, requiring delay by the course of the rolls ; that cannot be alleged for

No 9.
Adjudica-
tions, upon
decrees cog-
nitionis causa,
led before the
sheriff, re-
quire no ab-
breviate.