

No 45. 1708. December 18. ERSKINE *against* HAMILTON.

THE LORDS allowed a party who had a real right upon lands to object against a competing adjudication, that it was null, being led upon a bond paid by the debtor, although he who quarrelled the adjudication derived no right from the person against whom it was led.

Fol. Dic. v. 1. p. 520. Forbes.

* * This case is No 88. p. 2225. *voce* CITATION.

1710. November 29.

HUGH MITCHEL of Dalgain *against* JEAN BAILIE, Relict of THOMAS SHEARER, Merchant in Glasgow, and THOMAS SHEARER, her Son.

No 46.

In an action for payment of teinds belonging to and possessed by the defenders, to which the pursuer claimed right by a charter of adjudication and infeftment thereon, the Lords found no process at the pursuer's instance, unless he would produce the adjudication itself, and instruct a right to the teinds in the person against whom the adjudication was led.

In the action at the instance of Hugh Mitchel against Jean Bailie and Thomas Shearer, for payment of the teinds of two acres of land called Isholm, belonging to and possessed by the defenders, to which teinds the pursuer claimed right by a charter of adjudication and infeftment thereon;

Alleged for the defenders, The charter of adjudication is not a sufficient title, unless the adjudication itself, with a right to these teinds, in the person of him they are adjudged from were instructed; adjudications being only relative rights, taken and granted *periculo petentium*.

Replied for the pursuer, A charter and sasine is a good title against such as have no right at all. The pursuer is not obliged to produce his author's right, unless there were a competition upon a better right; as a tenant could not, in a process of mails and duties at the instance of an adjudger, object against the adjudger's title.

Duplied for the defenders, Every heritor hath a kindly right to the teinds of his own lands, so long as a better doth not appear.

THE LORDS found no process at the pursuer's instance, unless he produce the adjudication itself, and instruct a right to the teinds in the person against whom the adjudication was led. See TEINDS.

Fol. Dic. v. 1. p. 519. Forbes, p. 445.

1712. January 31.

ARCHIBALD, Earl of Forfar, *against* JOHN GILHAGIE, late Merchant in Glasgow.

No 47.

An heir of provision to the granter of a charter

ALEXANDER WADDEL, Merchant in Glasgow, having, *in anno* 1658, appraised from the heirs of Gavin Rae, a forty-three shilling nine-penny land of the