

S E C T. II.

After twenty years, warrants need not be produced.

1710. *July*, Competition CREDITORS of MAXWELL of Newlaw.

FOUND that letters of special charge need not be produced after 20 years, even though in the defender's hands. See APPENDIX.—See No 7. p. 174.

Fol. Dic. v. 3. p. 254.

* * * This case is referred to in No 20. p. 5187. as being dated in 1741.

No 15.

1713. *February 20.*

THEODORE MORISON of Bognie *against* The EARL of LEVEN.

IN the reduction and improbation at the instance of Bognie against the Earl of Leven, for sweeping away all rights affecting the estate of Frendraught; the LORDS, upon a report made by the Lord Arniston, found, *imo*, That a decret of apprising recovered from a third party, and produced *ad modum probationis* in a decret of constitution, against one as charged to enter heir in general, was not to be considered as a ground and warrant of the decret; so that in a reduction and improbation of the decret of constitution, and an adjudication following thereon, the adjudger was not bound to produce that apprising which was the right of a third party, in which the adjudger had no interest; and therefore the LORDS refused to grant certification against the decret of apprising. *2do*, THE LORDS refused to grant certification against a general charge to enter heir, with the executions thereof after 20 years, conform to the decision, Brown *contra* Hume, No 7. p. 5169; as after so long time there is no necessity of producing a summons of adjudication with the executions thereof.

Fol. Dic. v. 1. p. 354. Forbes, p. 674.

No 16.
In a reduction of a decret of constitution against a person charged in general to enter heir, certification against the general charge and executions thereof, was refused after twenty years.

1724. *July 29.*

ALEXANDER MACBRAIR of Netherwood *against* JAMES MAXWELL of Barncleugh.

In the reduction of an apprising dated *anno* 1665, the following nullities were objected, *imo*, That the decret of constitution was without proof of the

No 17.
The want of a special charge after 20 years, sufficient to cut off accumula-

No 17.
tions of an
adjudication.

General
charges need
not be pro-
duced after
twenty years.

Services and
confirmations
are writs in
*publica custo-
dia*; so there
can be no
presumption
of fraud, in
consequence
of the certi-
fication, on
the supposi-
tion that they
had been
fraudulently
kept up.

passive titles, any further than by the production of a general charge mentioned in the decret, but which was not now produced, on the contrary certification was obtained against it. *2do*, There are other titles mentioned in the decret, such as a service and confirmation; but against these likewise certification was obtained. *3tio*, The apprising proceeded upon a special charge, but the decret did not mention that it was produced to the inquest; and certification was also obtained against it.

It was *answered* to the *1st*, That there was no necessity of producing charges to enter heir after 20 years, no more than summonses or other executions, as was found Brown against Home, No 7. p. 516g. To the *2d*, That Netherwood had no title to reduce the service or confirmation; and besides, these writs were in *publica custodia*, which cuts off the presumptive falsehood introduced by the certification, upon the supposition that the writs were fraudulently kept up, and that they would appear to be forged if produced. To the *3d*, it was *answered*, That the decret of apprising was a special charge, the whole of the apprising being one execution by the messenger, and it narrates a special charge to have been given; and therefore there was no necessity to mention it again in that part which relates to the proceedings of the Court of apprising itself; nor is there any necessity of producing it now after 20 years, more than there is for producing a general charge; these are small pieces of paper which are easily mislaid or lost, and therefore the law dispenses with the production of them after a long period of time.

'THE LORDS repelled the objection founded on the want of the general charge, retour and confirmation; but found, that the want of the special charge was a sufficient ground to cut off accumulations; and remitted to the Ordinary to determine how far the apprising ought to subsist as to the penalty.'

Reporter, Lord Polton. Act. Boswell. Alt. Ch. Areskine. Clerk, Dalrymple.
Fol. Dic. v. 1. p. 354. & v. 3. p. 253. Edgar, p. 112.

1725. November 26.

No 18.

Executions of
general and
special
charges not
necessary to
be produced
twenty years.

SIR WILLIAM COCKBURN *against* The CREDITORS of Thomas Calderwood.

IN the competition betwixt these parties, about a subject in Mortonhall's hands; Sir William's interest was an adjudication led by Dr Hay, against a principal debtor; and the debt being shortly thereafter satisfied and paid by Sir William's predecessor as cautioner, the adjudication was conveyed *anuo* 1720, out of the *hereditas jacens* of the Doctor, by a process at Sir William's instance against his representatives. It was *objected* by his competitors, That the adjudication is null, *imo*, Because it proceeds upon a decret of constitution, wherein the passive title is a general charge to enter heir, and yet the executions of the general charge not produced. *2do*, It proceeds against an appa-