

No 51.

with whom they were contracting standing infeft upon an opulent estate, and saw no other infeftment upon record, whereby he was denuded.

Answered for the Earl, That the competitors were not infeft upon their adjudications; and, though they were, yet the adjudications themselves being some years posterior to the Lord Kennedy's infeftment, the 13th act of Parliament 1693 did plainly determine the question against them; and as to the subsequent act, that only prescribes rules for the better keeping of the minute-book or registers, but introduces no new privilege in favours either of purchasers or creditors who transact still with the hazard that infeftments may be duly taken, which, though not registered, may be registered within sixty days after taking thereof, that time being allowed to all such as have taken infeftment for the registration thereof; and the same being registered, validates the sasine *retro* from the date, except in competition with other infeftments registered before, which is not the present case; for here even the contract of marriage itself, though without sasine, would have been good against those debts contracted after the same, while they continued only personal; *2do*, The act 1693 did not concern this case; for the inconveniency there taken notice of, was, that though sasines were duly presented and registered, yet the minute-book was not duly kept, nor the note of the sasine bearing the day and hour when the same was presented and registered therein set down; so that parties looking into the said minute-book, and finding no sasine of the lands booked, were often induced to purchase, or lend money, even after registration of the sasine; and yet, even in that case, there is no nullity statuted against the sasine not regularly inserted in the minute-book, but only a penalty against the keepers.

“ THE LORDS preferred the Earl to the other competitors Beaumont and Fairholm.”

For the Earl, *Graham*.

Alt. *Sir Arch. Sinclair*

Clerk, *Robertson*.

Fol. Dic. v. 2. p. 332. Bruce, v. 2. No 22. p. 28.

1726. July 22.

Competition JEAN EDMONSTON *against* ELIZABETH THOMSON.

No 52.

Abbreviate of
adjudications
must be re-
corded.

JEAN Edmonston, having right to an adjudication of certain lands, craved to be ranked *pari passu* with the first effectual adjudication; in the person of Elisabeth Thomson, being within year and day thereof.

It was *objected*, That the abbreviate of Jean Edmonston's adjudication is not recorded; and Elisabeth Thomson's adjudication, duly recorded, is preferable by act 31st Parliamept 1661.

Answered, The act 62d Parliament 1661, brings in *pari passu* all apprisings within year and day of the first effectual apprising, without any mention of allowances; therefore the act 31st, concerning allowances, cannot relate to such

as are within year and day of the first effectual apprising; for, at that rate, the apprising first allowed should be preferred, even to those within year and day, contrary to the provision in the 62d act. So that, to take these acts in consistency, the last relates to adjudications within year and day, the first to all others.

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Replied, The act bringing in appraisers *pari passu*, does not indeed specify, that the appraisings must be recorded; neither does it specify any other formality: But, certainly, when appraisers within year and day, are brought in *pari passu*, the act can be understood of such only as have all the solemnities and formalities required by law: And in this way, the acts are perfectly consistent. That this was the meaning of the Legislature, will appear, because otherwise the record of the abbreviates would be of no use; for if appraisings need not be recorded, to give them the benefit of the act 62. an apprising led thirty or forty years before the first effectual one, must come in *pari passu* with it: A purchaser then can have no security, by looking to the record of abbreviates; he must turn over the whole records of the Court of Session for forty or fifty years, together with the register of interruptions; for otherwise he can know nothing of many adjudications, which will come in *pari passu* with the first effectual one, though he sees nothing about them in the record of abbreviates. To what purpose then would that record signify?

“ THE LORDS found, That the adjudication, whereof the abbreviate is not duly recorded, in terms of the act 31st Parliament 1661, though led within year and day of the other adjudication, whereof the abbreviate is duly recorded, cannot be brought in *pari passu* with it.”

Fol. Dic. v. 2. p. 332. Rem. Dec. v. 1. No 88. p. 177.

1732. *January.*

STIRLING against JAMIESON.

INHIBITION must be published at the market-cross of the regality within which the debtor dwells; and it will not supply this defect, that it be published at the head burgh of the shire. It must also be registered in the books belonging to the same jurisdiction, or else in the general register. See APPENDIX.

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Fol. Dic. v. 2. p. 333.

1732. *February.*

LORD REGISTER against DIRECTORS and CLERKS of CHANCERY.

By act 33d Parliament 1685, it is ordained, That all clerks within the kingdom, who keep such registers as are or have been in use to be delivered to the Clerk-Register, to be preserved in his Majesty's general register-house, do give

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