

(FORMALITIES of the DILIGENCE.)

1710. December 20.

WILLIAM BAILLIE, Wright in Edinburgh, *against* JANET CUNNINGHAM, Relict of Thomas Porteous, Merchant there.

IN the process of declarator of expiration of the legal of an apprising of some houses in Edinburgh, belonging to the deceased Thomas Porteous, at the instance of William Baillie, against Janet Cunningham, relict of Porteous; the LORDS sustained this *objection* against the apprising, That it did not bear a copy to have been affixed upon the market cross, but only, that a copy was left there, relevant to hinder the legal to expire, and take off the accumulations, and restrict the apprising to the principal sum, and annualrents, due to the appriser.

*Forbes, p. 457.*

No 5.  
An apprising restricted, because the execution did not bear, that a copy was affixed upon the market cross, but only, that it was left there.

1736. February 18.

ELIZABETH REID, *against* JOHN HENRY of Auchinloch, and his SON.

THE said Henrys, having led an adjudication against the three daughters of the deceased Andrew Reid, as heirs-portioners to him; during the currency of the legal, Elizabeth, the youngest, brought a reduction, after both her sisters died; of the adjudication, upon this ground, That the special charge was only executed against her and her eldest sister.

*Answered*: That, as it was regularly led against two of them, whose proportions of the estate were more than sufficient to answer the defender's debt, it ought to be sustained, as to the accumulations: For, if the decret had been taken against two of them, without calling the third at all, it would have been a valid security for the debt; and, therefore, the not citing one of them ought not to free the others of what they were liable for.

*Replied*: The adjudication, against the sister who was not charged, is informal; seeing it was adjudging from a person who had no right: Which objection must affect the whole adjudication, even as to those who are charged; because, the decret of constitution being against all of them, the adjudication has gone out against the shares of the land belonging to them that were specially charged for payment of the whole debt; whereas, it ought only to have been for their proportion, after deducting the share of the heir not charged: In short, a decret against two could only proceed for two-thirds of the debt; whereas, this adjudication, being for a third more, is irregular.

THE LORDS sustained the reason of reduction of the decret of adjudication, that the same is deduced against three heirs-portioners, and only two of them charged to enter to their predecessor, relevant to restrict the adjudication to a security for the principal sum and annualrents.

*Fol. Dic. v. 3. p. 7. C. Home, No 21. p. 45.*

No 6.  
In an adjudication against three heirs-portioners, one of them was not specially charged. The adjudication restricted.