No 10. *constitutione imperatoria*, or at least an act of sederunt to establish it. *See* IMPROBATION.

Fol. Dic. v. 1. *p.* 353. *Fountainhall, v.* 2. *p.* 336.

1743. *February* 5. MAXWEL and RIDDEL *against* MAXWEL.

No 11.
Decree of adjudication for two debts, while the bill of adjudication mentioned one only, sustained after 20 years.

IN a reduction and improbation at the instance of Robert Riddel of Glenriddel, against James Maxwel of Barncleugh, it being *objected* to an adjudication produced for Barncleugh, That the same was null as being led for two debts, though only one of these debts was contained in the bill of adjudication; it was *answered* for the defender, That it being now more than 20 years since the date of the adjudication, he was not bound to produce the warrants; and though such bill should be in the signet, there might have been another bill for the other debt; and after 20 years, the presumption in law was, that the summons was duly warranted by the bill.

Replied, That though warrants need not be produced after 20 years, yet if they do appear and are defective, the objection still lies; and as to the allegeance that there might have been another bill for the other debt, that was said to be impossible, for that it was inconsistent that one summons should have two warrants.

THE LORDS, before answer, 'Remitted to the Ordinary to inquire into the practice, how far a summons of adjudication, or any other passing upon bill, is in use always to have one bill for its warrant? or, if the same summons is in use to be taken out upon more bills than one, where there are different grounds of debt?' And the most experienced writers being called upon by the Ordinary, declared that they never knew or heard of one summons being raised upon two different bills, either in the case of adjudications, or any other summons passing the signet.

Upon the Ordinary's reporting whereof the LORDS in the reasoning among themselves took up the case upon the nature of the objection in general to an adjudication for the want of, or defect in the bill of adjudication; and it was on the one hand said, that it was doubted, if the want of the bill of adjudication, even within 20 years, should void the adjudication, as these bills never come into the hands of the adjudger, but lie at the signet; and should they be lost by the negligence of servants in the office, it would be the hardest thing imaginable for that to avoid the diligence; but still more so in this case, where the 20 years were elapsed, and no certainty that the bill supposed to be lying at the signet was at all the bill on which the adjudication had proceeded.

Answered, That where the question occurs within 20 years, however hard it may be on the party, yet it is our law, that the loss of warrants, even of those which never came into the hands of the party, affects the diligence. If again, after 20 years, the warrants appear, and are defective, the objection lies as

No 11.

within the 20 years; and the answer can never be admitted that there might have been another warrant, for that would in effect resolve into this, that no objection lay after 20 years.

Replied, That it was true, that the party would be affected by the loss of warrants which never came into his custody, where they are such as come under the eye of the Judge, as, for example a special charge; but that it could not be admitted to be true of such warrants as never appear before the Judge; and such is a bill of adjudication; and the case was supposed of the reduction of a charter for want of a signature, which was said to resemble this case the nearest that any thing could do, where such reason of reduction ought not to be hearkened to; and that therefore though a bill of adjudication should not appear even within the 20 years, it ought not to void or even restrict the adjudication.

But 2*do*, As this is in a case after the lapse of 20 years, it was said to be at least a possible supposition, that another bill liable to no objection may have been the warrant of the summons. For though it be true, that in the case, for example of a special charge, extant after 20 years, and liable to objection, the presumption will not be admitted that there may have been another special charge, yet the case is very different of a bill of adjudication; for, the special charge is produced before the Judge, becomes part of the record, and therefore there can be no doubt that such special charge lying in the record has been the foundation of the proceedings; whereas a bill of adjudication enters upon no file, and is never any part of the production in judgment.

THE LORDS, by the narrowest majority, 'Repelled the objection as insufficient even to open the legal.'

N. B. In fact, no such bill of adjudication did now appear, but it had been brought from the signet and laid before the Ordinary, before whom the objection was first made, whereon a minute had been extended and the bill thereafter returned, which now was amissing; all which was controverted as no sufficient evidence of the fact, as the person who had produced the said bill as from the signet, was said to be no proper officer, and withal a person *malæ famæ*, the same who had been the principal agent at London in the subornation charged upon Newlands, February 19. and June 17. 1741, *voce* JURISDICTION; and the minute was said to have been made up at an irregular calling when no lawyer for the defender was present. But, without entering upon any inquiry as to these facts, the above judgment was given upon the supposal, that the bill of adjudication was extant at the signet, and labouring under the defect objected to it.

Fol. Dic. v. 3. *p.* 254. *Kilkerran*, (GROUNDS AND WARRANTS.) *No* 2. *p.* 227.

1759. *December* 20.

JOHN MACKENZIE of Ardross *against* JOHN ROSS of Auchnacloich, and JAMES CUTHBERT of Millcraig.

No 12.
Found that it was necessary to produce the grounds of an apprising led an hundred years before, in a competition with a posterior apprising, with regard to the reversion of wadset-lands contained in both apprisings, but possessed by neither of the parties.

IN the year 1641, Hugh Ross of Tollie granted a wadset of his lands of Culkennie, mill of Milcraig, and others, to William and Gilbert Robertsons, elder and younger of Kindeace, redeemable upon payment of 20,000 merks. In 1721, this wadset came into the person of their successor William Robertson; who was infeft in the wadset-lands, in virtue of a precept of *clare constat* from the superior.

Hugh Ross of Tollie died in the year 1643.

In 1644, Mackenzie of Coul obtained an apprising of the property-lands of Tollie, and of the wadset-lands above mentioned, for payment of a considerable sum, against John Ross, as lawfully charged to enter heir to the said Hugh Ross his father; and in 1647, he obtained another apprising of the same lands for a different debt.

These two apprisings, upon the first of which a charter and infeftment had passed in 1644, were purchased from Coul, in 1656, by Alexander Mackenzie of Pitglassie, and came by progress into the person of John Mackenzie of Ardross.

In the year 1650, Thomas Manson led an apprising against the said John Ross of the whole lands above mentioned; and, in 1652, another apprising of the same lands was led by Mackenzie of Inverlaal.

These two last apprisings, upon both of which charters and infeftments passed, were purchased in 1653 and 1658, by John Ross of Tollie, against whom they had been led; and having passed to his successive heirs, stood, in 1721, in the person of Hugh Ross of Auchnacloich.

Upon the 23d of May 1721, William Robertson, in whose person the wadset then stood, disponed the wadset-lands to Hugh Ross of Auchnacloich, redeemable always, and with and under the reversion and right of redemption contained in the contract of wadset. And, of the same date, Hugh executed a disposition of these lands, under the title of heritable proprietor, in favour of his son John, and other heirs therein mentioned.

John died without issue; and was succeeded by Robert Ross late of Auchnacloich, his uncle; who sold the wadset lands, heritably and irredeemably, to James Cuthbert of Millcraig.

In 1756, Mackenzie of Ardross, whose predecessors had been in the constant possession of the property-lands of Tollie, in virtue of the two apprisings led by Mackenzie of Coul, brought a process for declaring his right to the reversion of the wadset-lands, which were likewise contained in the said apprisings, but which had remained constantly in the possession of Robertsons the wadsetters, untill their right was disponed to Hugh Ross.