

No 12. will apply to neither party against the other, though to both, if joined to any third party, or to him who prevails, and is found to have the true right.

'THE LORDS found, that the pursuer is obliged to produce the grounds of his apprising.'

Act. *David Dalrymple, jun. Frq. Garden, Tho. Miller, John Craigie.* Alt. *Lockhart, Ferguson.*
G. C. Fol. Dic. v. 3. p. 254. Fac. Col. No 204. p. 365.

1766. March 5. JOHN CHALMERS against MARGARET OLIPHANT.

No 13.
Necessary to produce the grounds of debt, though there had been possession upon an adjudication for more than forty years.

ALEXANDER BLACK, having bought a quantity of grain from Durham of Largo, Largo, in 1701, adjudged for the price a tenement in the Potter-row, belonging to Black. No charter or infeftment followed; but possession was taken in 1713, and continued till the commencement of this action beyond 40 years.

Jean Black, grand-child of Alexander, having granted a trust-bond to John Chalmers, he raised a summons of adjudication. Compearance was made for Margaret Oliphant, who had acquired right to Largo's adjudication, and, with the decret, was produced the contract for the corn, but no receipts to prove the delivery.

The pursuer *objected*, That the adjudication was null, as there was no evidence of the debt.

Answered, Had no possession followed, the objection would have been good; for then the adjudication could be considered as a step of diligence only; but, when possession has followed upon it for more than 40 years, it falls to be regarded as a title-deed, and all challenge is cut off by the negative prescription.

Replied, A right to heritage cannot be lost by the negative; it must be acquired by the positive prescription; and there is no place for that without charter and infeftment. A decret of adjudication is no more than a legal conveyance in security of the debt; and therefore must be supported by production of the grounds of debt, though possession has been had upon it for ever so long a time.

'THE LORDS found it was incumbent on Oliphant to produce the grounds of her adjudication.'

Act. *Wight.* Alt. *Swinton, jun.* Clerk, *Home.*
A. R. Fol. Dic. v. 3. p. 254. Fac. Col. No 34. p. 58.

* * * Lord Kames reports the same case :

AN adjudication was led *anno* 1701, of a tenement in Edinburgh for the sum of L. 2529, upon which possession following, was continued above 40 years. The possessor considering himself to be proprietor by the expired legal of his

adjudication, upon which he could take infeftment at any time, did in the year 1731, rebuild and enlarge the tenement, so as greatly to encrease the value. The heir of the subject, upon the title of a trust-adjudication, brought a reduction of the adjudication upon the following medium, that the grounds of the adjudication were not produced. The grounds were a contract of victual by which Durham of Largo became bound to deliver to Alexander Black 300 and odd bolls bear at a certain price, with three receipts by Black, acknowledging the receipt of the victual. The adjudication bears production of every one of these documents; but the three receipts were amissing when the reduction was insisted on, and could not be produced. It was found by the Lord Ordinary, that in respect the grounds are not produced, the adjudication is not a title of prescription. In a reclaiming petition, it was chiefly insisted on, that *post tantum temporis* there is sufficient evidence of the debt to support the adjudication. It occurred to me at advising, that an adjudication, however old, is not a good title for a process without its grounds; but that where possession has followed upon the adjudication, and a reduction intended of it, it is not necessary to produce the grounds after 40 years as was found, Kennoway *contra* Crawford, No 9. p. 5170. The reason is, That the adjudication being *rite* led requires a reduction; and that this reduction must be brought within 40 years, to save it from the negative prescription; which, in other words, is saying that the defender in possession by the adjudication, is not bound to produce his grounds to the pursuer, who is cut off by the negative prescription, and has no title to insist in a reduction. But the Court unprepared for this defence, which was not stated in the reclaiming petition, found that the defender must produce the grounds of his adjudication.

No 13.

Sel. Dec. No 244. p. 317.

1782. *January 17.*

TIMOTHY LANE, and Others, Creditors of the York-buildings Company,
against WALTER CAMPBELL of Shawfield.

IN the process of ranking of the Creditors of the York-buildings Company, it was

Objected to the interest of Mr Campbell, founded on several decreets of adjudication, that the summonses were not conformable to the bills which were their warrants; as appeared upon production of these warrants themselves.

Answered for Mr Campbell; The decrees in question were extracted above 50 years ago. But, after 20 years, it is not necessary to produce the warrants of any decree; Cutler of Oroland*, Maxwell and Riddel *contra* Maxwell, No 11. p. 5174; Irvine of Drum *contra* Earl of Aberdeen, No 20. p. 5187. Nor though they should happen to be extant, can any argument be founded

No 14.
Disconformity in warrants of adjudications appearing on production after twenty years from their dates, not challengeable.

* Examine General List of Names.