

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.

No 14.

upon them; Trustees of Murray of Stanhope against Earl of March, 1772.
See APPENDIX.

Replied; It has indeed been generally held, that, after the lapse of 20 years, parties are not bound to produce the warrants of decreets, as in the cases already cited. But however reasonable or expedient it may be to secure parties, after such a length of time, from suffering loss by the mere want of warrants, it will not follow, that, from the lapse of a greater or of any number of years, objections should be barred which are founded on intrinsic nullities or informalities appearing from actual production of the warrants themselves. *Quod initio vitiosum est, tractu temporis convalescere non potest.*

It was farther *objected* to one of the above mentioned adjudications, which had been deduced by a person called Somerville; that though the sum of L. 50:9s. Sterling was originally libelled for in name of damages, and contained in the decret which was first extracted; yet that the new extract now produced bears, without any warrant whatever, a decerniture for L. 84.

Observed on the Bench; The warrants of decreets are commonly left in the custody of inferior officers, some of whom might possibly be tempted by parties to falsify those warrants, were this artifice to have effect at such a distance of time as would render its detection difficult or impossible. For that reason, although the grounds of decreets of adjudication, if called for within the years of prescription, must be produced; yet the law does not require exhibition of their warrants after 20 years. From so long an acquiescence of the parties interested to challenge them, *omnia præsumuntur rite et solenniter acta*; though, if an adjudger should himself produce the warrants, by thus acknowledging their authenticity, he must answer for any nullities or informalities which they may labour under.

The objection relative to the penalty was considered as affording good ground for modifying that claim to a very small amount.

THE LORDS adhered to the Lord Ordinary's interlocutor, 'repelling the objections; with this variation, that they modified the sum contained in John Somerville's adjudication and constitution for damages and expenses to L. 5 Sterling; and in so far restricted the accumulated sum contained in the said adjudication.'

A reclaiming petition for Timothy Lane against this judgment was refused without answers.

Lord Ordinary, *Monboddo.*

For Shawfield, *Ilay Campbell.*

For Objectors, *Rae, Elphinston.*

Clerk, *Colquhoun.*

S.

Fol. Dic. v. 3. p. 254. Fac. Col. No 20. p. 38.