

(FORMALITIES OF THE DILIGENCE.)

and as the defender knew this description could only apply to his grand-father, he was therefore fully certiorated of the person to whom he was to enter by that description; and *utile per inutile non vitiatur*. 2do, Hugh Ross the father, was liable *passive* to the grand-father's debts; and though the grand-son had only been charged to enter heir to his father; yet he would, by not renouncing, have become liable for all the debts due by the father, whether of his own contracting, or as representing the grand father. 3tio, At least the adjudication ought to be sustained as an adjudication *cognitionis causa*, agreeable to the decision 27th February 1684, Dunlop against Brown, (See p. 46. Quarto Dictionary,) and to the judgment given in a late case, in the ranking of the creditors of Kinminity.*

Answered for the other creditors, That there was undoubtedly a very material error in the form of leading of this diligence, which must be fatal to it in a competition among creditors; and that there was something more here than a mistake of the designation: For, in the letters of special charge which followed upon the decreets of constitution, the grand-son is charged to enter heir to both father and grand father. To the *second*, That the passive title there mentioned, might have availed to establish these debts *passive* against the father, either upon a charge to enter heir, or upon a proof of the passive titles; but they having never been constituted against him, could not, by any form known in the law, be transferred against the infant grand-son, upon a general charge to enter heir to him. To the *third*, That the cases quoted are foreign to the purpose. In them the decreets of constitution were in every respect regular and formal, but were obtained against infants in absence, who were therefore entitled to be reponed in so far as they had not renounced, but no farther; as upon a renunciation being produced, decret of constitution must have gone forth against them: But here the decreets of constitution are *funditus* void, as proceeding upon an erroneous general charge.

'THE LORDS found the decret of constitution void, and consequently the adjudication following thereon null.'

A.G. Lockhart.

Alt. Brown & Ferguson.

Fol. Dic. v. 3. p. 7. Fac. Col. No 155. p. 233.

Walter Stewart.

1784. June 27.

The COMMON AGENT in the ranking of the Creditors of Pinmore, against JEAN and FERGUSIA KENNEDIES.

JEAN and FERGUSIA KENNEDIES, adjudged from Robert Kennedy of Pinmore, all and hail a tack, dated of the lands of Daldowie

No 14.
Adjudication
of a tack
sustained,
though the
date, the

* There is a case in this ranking, collected p. 129. of this Volume, and another under Husband and Wife. See General Alphabetical List of Names.

ADJUDICATION AND APPRISING.

(FORMALITIES of the DILIGENCE.)

No 14.
term of en-
durance, and
the granter's
name were
not specified.

' and others, granted by _____, to the said Robert
' Kennedy, of which there are _____ years still to run, from the term
' of _____ next to come.'

To this adjudication the common agent *objected*, That it did not specify the date of the tack, the granter of it, the term of endurance, nor the situation of the lands.

' THE LORDS repelled the objection.'

Lord Ordinary, *Alva.* For Jean and Fergusia Kennedies, *George Wallace.*

For the Common Agent, *George Ferguson.* Clerk, *Orme.*

Fol. Dic. v. 3. p. 8. Fac. Col. No 163. p. 254.

Craigie.

GENERAL CLAUSE in APPRISING and ADJUDICATION.

1673. November 21.

FAIRHOLM *against* RENTOUN and the Countess of LEVEN.

No 1.

An apprising is led, of an infestment of annualrent. The letters contain the words, *and all other right.* The charge is given to infest in the land, not in the annualrent. This is objected to; but on account of the general words in the apprising, the charge is sustained.

THE Earl of Leven having granted bond, of 20,000 merks to the Laird of Lamertoun, with an infestment of annualrent thereon, in the barony of West Nilbet; The same being apprifed, first by Mr John Fairholm, he charged the Countess, on the apprifing, to receive him; and, thereafter, it was apprifed by Rentoun, Justice Clerk; and the Countess having raised a double pointing: In the competition, it was *alleged*, for Mr John Fairholm, That he ought to be preferred; because he had the first apprifing, and the first charge. It was *answered*, That, though Rentoun's apprifing was posterior, yet it was preferable; because infestment had proceeded thereupon: and Fairholm's charge was informal, and null; because the Countess was charged to receive him into the lands; whereas the right was an annualrent furth of the lands, which is a distinct right from the lands, requiring distinct solemnities; neither did the apprifing apprise, or adjudge, an annualrent; nor did the horning charge to infest in an annualrent, but to infest in the land. Whereupon, the LORDS found already, That the charge was null; and, if the Countess had given obedience, and infest Fairholm in the land, and Rentoun in the annualrent, he would have had the only right. It was *replied*, That apprifers, who cannot know their debtor's rights, can do no more but apprise *the ground, right, and property, and all other right*; and, if they charge accordingly, it is sufficient to reach an annualrent, or any other just right: and there is more in this case, for the apprifing is not only of the property, and all other right, but