(Pafs *periculo petentis.*)

No 8.

*** This cafe is thus reported by Dirleton:

MR GEORGE BLAIR being called in an adjudication, at the inftance of Kinloch of Gourdie, as fuperior of the lands craved to be adjudged; did *allege* that they could not be adjudged, becaufe they did belong to him by a difpofition and refignation thereupon *ad remanentiam.* It was *anfwered*, That adjudications are now in place of compriſings; and, as fuch debates were not competent againſt compriſings, the time of the deducting of the fame; fo they ought not to be admitted againſt adjudications; feeing compriſers and adjudgers do adjudge or compriſe upon their own hazard: And if the debtor has any right or intereſt, it ought to be adjudged; and if he has none, there is no prejudice to any perſon.

THE LORDS found, That there being no competition of creditors, and no hazard of retarding the purſuer's diligence upon that account; the defender being called, might propone the ſaid defence; and ought not to be put to trouble and charges to appear in any other proceſs, for mails and duties, or removing; eſpecially ſeeing he was content, that if the purſuer had a reduction, as he pretended, of his right, that it ſhould be diſcuſſed preſently; and, though he had no reduction, that what he could ſay againſt his right, ſhould be heard and diſcuſſed by way of reply.

Reporter, *Forret.*

Dirleton, No 305. *p.* 151.

1699. *February* 7. GORDON *againſt* FORBESSES.

No 9.
In adjudication of bonds by apparent heirs, where no notoriety of their predeceſſor's right, and no competition of creditors, adjudication will not paſs without ſome evidence.

MERSINGTON, reported Gordon of Inverebrie, againſt Forbeſſes of Ballogie, Tulloch, and Balflug. Tulloch, as apparent heir to his grand-father, in the lands of Corſinday, and others, grants a bond for 18,000 merks to , who, thereupon charging him to enter heir, and obtaining a decreet *cognitionis cauſa*, raiſes an adjudication. Compearance is made for Ballogie and others, now proprietors, who repeat a declarator they had raiſed, that the lands have pertained immemorialy to them; and they deny his goodfire had ever any right thereto, or that he is the neareſt in blood; elſe any man, on his own bond, may cauſe charge himſelf to enter to ſome of his predeceſſors, in lands they never had right or claim to, and thereupon raiſe improbation againſt the juſt poſſeſſors, open their charter-cheſts, propale their papers, and vex all the country.—*Anſwered*, Adjudications are *judicia ſummaria*, and ought not to be ſtopt on alledgeances that require probation; but the form is, to decern, and reſerve all theſe defences *contra executionem* in the mails and duties, as may be ſeen, 15th

(Paſs *periculo petentis.*)

November 1666, Chein, (*No 7. h. t.*); 13th January 1672, Maſter of Salton, (*See* HEIR PORTIONER); 22d July 1664, Livingſton, (*No 6. h. t.*); and lately a defence of preſcription, (which is the very caſe in hand,) was repelled betwixt Thomſon and Archibald.—*Replied*, 'Tis very true, the Lords will not ſtop adjudications on every allegeance, where the purſuer is a true creditor, and the apparent heir's contingency in blood is notour, and there is a general fame that land once belonged to their family; but where none of theſe appear, and where there is no ſtriving for diligence, but 'tis the firſt adjudication, and ſo no *periculum in mora*, the Lords will not eaſily paſs ſuch adjudications; and my Lord Stair, part 2. tit. 2. thinks, in ſuch caſes, ſome evidence ſhould be given of the intereſt in the land.——THE LORDS found, Where adjudications are ſought on apparent heirs bonds, and there is no notoriety of their predeceſſors having been heritors of that land, and that there is no concourſe of creditors ſtriving for diligence, there ought to be no decreet of adjudication, till they give ſome document that they once had right to the land craved to be adjudged, by a ſaſine, or ſome other evident, and that he had a contingency in blood. (*See* IMPROBATION.)

Fol. Dic. v. 1. *p.* 12. *Fount. v.* 2. *p.* 41.

No 9.

1700. *June* 21.

LORD ARCHIBALD HAMILTON, and SIR JAMES OSWALD, *againſt* SIR CHARLES MURRAY of Hadden.

No 10.
An offer to inſtruct *inſtanter*, that the debtor was denuded, and that the party ſo offering was himſelf proprietor; refuſed to be received ſummarly, as an exception. The adjudication paſſed, reſerving all defences *contra executionem.*

LORD ARCHIBALD, as creditor of Hadden, raiſes an adjudication of his lands for L. 300 Sterling. At calling, Sir Gilbert Elliot of Stobs compears, and *alleges*, there can be no adjudication, becauſe Hadden was denuded of theſe lands in my favours, by an irredeemable diſpoſition, whereon I am publicly infeft under the great ſeal; ſo you cannot adjudge my lands for Hadden's debt.—*Anſwered*, I will not debate your right *hoc loco*, though it be but recent within theſe two or three years, and from a father-in-law to his goodſon, and ſo liable to much ſuſpicion; my ſummary proceſs of adjudication cannot be ſtopped *hoc ordine*, but I muſt be allowed to go on, reſerving your defences and right *contra executionem*, when I come to ſeek poſſeſſion, or purſue for mails and duties; and that the Lords decided ſo 28d November 1664, Livingſton *contra* Lord Forreſter and Creditors of Grange, (*No 6. h. t.*), where the Lords adjudged, though it was inſtructed by a back-bond, that the debtor's right was only a truſt; only, they qualified it to be burdened with the back-bond. Yea, on the 15th November 1666, Gheyne *contra* Chriſtie, (*No 7. h. t.*), they adjudged ſimply.—*Replied*, If I were delaying, then it were unreaſonable to ſtop the adjudication; but I offer *inſtanter* to produce all my papers in the reduction, and to inſtruct my undoubted right to the lands, and debate preference; and whether my right be recent or old, *non refert*, ſeeing I can inſtruct its onerous cauſe, though *inter conjunctos*, *et*