

ADJUDICATION AND APPRISING.

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(RANKING OF ADJUDGERS AND APPRISERS.)

ture for Messrs Rofs and Ogilvie had been presented, it could be of no use, unless Mrs Mackenzie could have shown, that there was some irregularity in their proceedings.

No 45.

The Court were unanimously of opinion, That the adjudication of the superiority by Mrs Mackenzie was no bar to the subsequent confirmation obtained by Messrs Rofs and Ogilvie; and they were equally clear, that the infestment granted by Mrs Mackenzie to herself, was quite unauthorized.

The Lord Ordinary had found, That the adjudication at the instance of Catharine Mackenzie, is the first effectual adjudication *quoad* the superiority; but that the adjudication at the instance of Messrs Rofs and Ogilvie, is the first effectual one *quoad* the property.

And, after advising a reclaiming petition, which was followed with answers, THE LORDS adhered to the Lord Ordinary's interlocutor.

Another reclaiming petition was preferred; but it was refused without answers.

Ordinary, Lord Justice Clerk.
Clerk, Home.

Act. Honyman.

Alt. Abercromby, M. Rofs.

Eol. Dic. v. 3. p. 14. Fac. Col. No 183. p. 371.

Craigie.

1739. July 15. The CREDITORS of Thomson, Writer to the Signet.

The first effectual adjudger was found entitled to annual rent of the expence of his adjudication.

No 46.

Fol. Dic. v. 3. p. 15. Kilkerran, (ADJUDICATION.) No 5. p. 4.

1755. June 17.

COMPETITION betwixt Lieutenant DUNCAN CAMPBELL and NEIL M'VICAR.

LIEUTENANT DUNCAN CAMPBELL having purchased the estate of Kirnan, by a minute of sale, from Robert Campbell, apparent heir thereof, did, upon the 3d July 1744, deduce an adjudication in implement of the minute. On the 26th August 1747, he obtained from Sir James Campbell, superior, a charter upon his adjudication; and, upon the 1st September after, was infest.

Neil M'Vicar being creditor to the said Robert Campbell in a considerable sum due by bond, led an adjudication of the estate of Kirnan upon the act 1672, bearing date 10th July 1744. The adjudication was followed by a charge against Sir James Campbell the superior, 27th May 1745; and in this state the adjudication was produced in process, without being completed by infestment.

In a ranking of the creditors of Kirnan, M'Vicar insisted that his adjudication should be ranked *pari passu* with the Lieutenant's adjudication in implement.

No 47.

Adjudication in implement, and adjudication or apprising for debt, are incapable of a *pari passu* preference.

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No 47.

His reason was, That the same equity which affords a *pari passu* preference among adjudications for payment of debt, applies to adjudications in implement; that though the act 1661 be mute as to adjudications in implement, the reason is, that such adjudications were at that time unknown; that they were afterward introduced into practice, in imitation of the common statutory adjudications or apprisings; and are therefore not entitled to a higher privilege than their pattern.

Answered, It is a mistake to affirm that adjudications in implement were introduced after the 1661. They are of as old a standing as adjudications *cognitionis causa*; and both of them were known in practice more than a century before the restoration. By the act 1661, apprisings for debt were brought in *pari passu*, as also adjudications *cognitionis causa*. But not a hint of adjudications in implement, though these at that period were no less customary than adjudications *cognitionis causa*. Nor was this an oversight in the legislature, who could not but see that an adjudication in implement, and an apprising or an adjudication for debt, are not capable of a *pari passu* preference.

‘THE LORDS preferred Lieutenant Duncan Campbell.’

Select Dec. No 87. p. 115.

1761. August 5. ROBINA SETON against GRAHAM of Griegfton.

No 48.

Adjudications of personal rights, cannot be preferable to one another, on account of date or otherwise; they must be ranked *pari passu*.

ALEXANDER REID having obtained from Hope of Craighall, a feu-right of the lands of Baltilly, was infeft upon the precept of *fasine*. And during the course of several years, many adjudications were led against him, upon some of which infeftments passed. In the ranking of Alexander Reid's creditors, it was discovered that his infeftment being erroneously taken, was void; and consequently that the infeftments taken by his creditors were also void. The case then resolved into a competition among various adjudications of a personal right to lands. None of these adjudications being complete rights, their preference cannot be regulated by the act 1661, but by the common law; by which not one of them being preferable to the rest, they ought all to be ranked *pari passu* whether within year and day or not; like a number of assignments to a personal bond without intimation; a number of decrees against the same executor; or a number of bills drawn upon the same person, and accepted by him immediately before his bankruptcy.

‘The adjudgers were accordingly ranked *pari passu*.’ (See COMPETITION.)

Select Dec. No 185. p. 250.