

(GENERAL CLAUSE.)

No 5.

reversions, legals, or legal upon legal, which must have some figuification and effect, our ancient stiles being a part of our law : And Sir John Clerk's backbond, being of the nature of the *pactum de retro vendendo*, the adjudging all backbonds, and reversions, standing in the debtor's person, did fully and effectually denude him, before ever Dr Brown did specially adjudge it. And, to think that stile did not convey all the right in the debtor's person to the adjudger, were, at one stroke, to shake the securities of many estates in this nation, founded on no other bottom but such general clauses ; neither do any of the decisions cited come up to this case. THE LORDS, by a great plurality, found, The general clause, in Sir William Menzies's adjudication, carried this backbond, and denuded the debtor ; so as there was no room for Dr Brown's special adjudication ; and, therefore, preferred him to the Doctor. He also founded on another ground of preference, viz. That James Clerk, of Wright's-houses, had assigned this backbond to President Lockhart, and some others of his creditors, whereof the Doctor was one ; and this prior to Sir William Menzies's adjudication ; but, this point being new, they were remitted to the Ordinary, to be heard thereupon.

*Fount. v. 2. p. 675.*


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ADJUDICATIONS and APPRISING pass *periculo petentis* ; and all DEFENCES are reserved *contra executionem*, unless instantly verified.

No 1.

Exceptions against the grounds of debt, reserved, *contra executionem*, unless instantly verified.

1676. July 26.

BOYD against BOYD.

ALEXANDER BOYD pursues Thomas Boyd of Pinkel, his brother, upon several sums due to the pursuer, for himself and his assignees, for establishing the debts, and adjudging the lands in satisfaction thereof, conform to the act of Parliament. The defender *alleged*, no process, in this order, by accumulating the establishment of the debt, and the adjudication in one process. *2do*, The debts are suspended, and reduction and improbation raised against the same, which must be first discussed.

THE LORDS sustained the summons, and allowed the defender to repeat his reasons of reduction by way of defence, if the same were instantly verified ; and if he cannot, ordains the lands to be adjudged ; but with reservation of the reasons of reduction *contra executionem* in any process that shall be intended for mails and duties, &c. that the pursuer be not stopped in his diligence, or prevented by others.

*Fol. Dic. v. 1. p. 11. Stair, v. 2. p. 459.*