

power to plead on the *annus deliberandi*, so as to prevent adjudications from being led. All objections will be reserved *contra executionem*, and the heir is not hurt. He may renounce *qualificate*, and yet may take up the succession afterwards.

PRESIDENT. I think also that the Court will interpose, and not suffer the heir, by pleading the *annus deliberandi*, to vary the preferences of creditors. If Lord Braxfield's doctrine were just, it must have occurred in some ranking or other. The purpose of the law was to bring in those adjudications which could have competed, had it not been for the maxim, *prior tempore potior jure*, but not to introduce adjudications which before could not have competed at all.

MONBODDO. A first adjudication cannot pass during the *annus deliberandi*, but a second may.

ALVA. The first effectual adjudication is that which is effectual against the *hæreditas*, not against the *persona*.

On the 8th December 1781, "The Lords found that Sandside's adjudication must be held the first effectual adjudication;" adhering to Lord Monboddos interlocutor.

Act. Ilay Campbell. *Alt.* D. Rae.

Diss. Braxfield; *non liquet*, Kaimes, Ankerville.

N.B. The rest of December 1781 consumed in long hearings on proofs.

1782. *January* 16. TIMOTHY LANE *against* WALTER CAMPBELL of SHAWFIELD.

GROUNDS AND WARRANTS.

Disconformity in Warrants of Adjudication, appearing on production, after twenty years, not challengeable.

[*Fac. Coll. IX. 38; Dict. 5179.*]

BRAXFIELD. As long as a creditor keeps up an adjudication as a debt, he is obliged to produce the grounds of the adjudication; but, after twenty years he is not bound to produce the warrants. The Court never made any difference between general and special charges and steps of proceeding. Were any difference to be made, the charges ought rather to be produced, because they are part of the progress; and the creditor has less reason to complain, because he is in possession of them, although he is not of the steps of procedure. After twenty years, *omnia præsumuntur solenniter acta*. There is another question, Whether objections may not be made against warrants, if *produced*? If the creditor produces them, objections may be made; because, by producing them, he is held to assert that they are true warrants. But the present case is different. The objector is not entitled to go to the record to search out papers,

and to say, after the lapse of twenty years, "These are the warrants of your decret." The creditor may answer, that the warrant produced is not the warrant of the decret on which he founds.

On the 16th January 1782, "The Lords found that the pursuers cannot, after the lapse of twenty years, object to warrants not produced by the defender;" adhering to the interlocutor of Lord Monboddo.

Act. D. Rae. Alt. Ilay Campbell.

1782. *January 23.* HUGH WATT *against* HENRY RITCHIE.

INSURANCE.

A Ship, whose name had been lately changed, having been insured under the former one, such Insurance was found ineffectual.

[*Fac. Coll. IX. 43 ; Dict. 7074.*]

HAILES. It is singular that the two policies differ in all particulars,—in the name of the ship, in the voyage, in the parties concerned,—and that the only thing in which they agree is in the name of the master, which the pursuers hold to be a circumstance of no moment. How can the underwriter be liable in both policies, as on one ship and cargo, when he had all reason to suppose that he was insuring *one* ship and the cargo of another?

GARDENSTON. If the insurer was in the knowledge of the ship being the same, I should doubt; but that is not alleged, and indeed seems not to have been the case.

On the 23d January 1782, "The Lords sustained the defences, and assolied the underwriter;" adhering to Lord Westhall's interlocutor.

Act. R. Cullen. Alt. Ilay Campbell.

1782. *January 29.* WILLIAM FULLARTON and OTHERS *against* ARCHIBALD STEWART M'ARTHUR.

BILL OF EXCHANGE.

A Bill was made payable after the decease of the Drawer: he lived thirty-seven years after it: Action refused on it.

[*Fac. Coll. IX. 45 ; Dict. 1408.*]

BRAXFIELD. This is not a legacy, but a right altogether anomalous.