

1705. June 21.

The LADY INNERLEITH and Mr JAMES CATHCART, her Assignee, *against* Sir WILLIAM COCKBURN, and JOHN RENTON of Lamerton, and his Tenants.

IN an action of mails and duties, against John Renton of Lamerton, and his tenants, at the instance of the Lady Innerleith, as deriving right from the deceased Sir James Rothead, her husband, to an adjudication led upon bonds, granted to him by the Lairds of Langton and Cockburn, as principals, and Lamerton and the Lord Sinclair, as cautioners.

*Alleged for the defenders*: The adjudication is null, being led for more than was due; in so far as the sum adjudged for, is accumulated at a term prior to the date of the adjudication; and the annualrents thereof, till that time, are a clear overcharge, and the same thing upon the matter, as if the lands were decerned to belong to the adjudger, at a term preceding the adjudication.

*Answered for the pursuer*: If accumulating the sums, at a term preceding the date of an adjudication, were sustained as a nullity, few adjudications in Scotland would be unquarrelable, and safe from overturning; for nothing is more ordinary. But here annualrents are only decerned from the date of the adjudication; so that the debtor has no prejudice; and the *pæna plus petitionis*, which is the legal foundation of the objected nullity, cannot take place. Again, though the sum be accumulated at a preceding term, the lands are only adjudged from the date of the decret; and the adjudication contains no legal assignation to mails and duties with a retrospect.

THE LORDS found no nullity or ground of restriction in the adjudication; for they made a distinction betwixt adjudications accumulating at a preceding term, without decerning for annualrents from that term; and such as decern for annualrents from the date of the accumulation: Holding, that the first sort ought to be sustained, and the latter annulled or restricted.

*Fol. Dic. v. 1. p. 8. Forbes, p. 7.*

1707. March 25.

WILLIAM INNES, Writer to the Signet, *against* The EARL of BREADALBANE.

WILLIAM INNES, writer to the signet, having pursued a declarator of expiration of the legal, of an adjudication, upon the estate of Breadalbane, to which he had right: It was *objected* for the Earl of Breadalbane, That the legal could not expire; because the adjudication was null; at least, could only subsist as a security for principal sum and annualrent; in the bond it was led upon, and for the necessary charges:—In regard the annualrent and penalty were accumulated in a principal sum, at a term preceding the date of the adjudication, and made to bear

No 13.

A sum adjudged for, was accumulated at a term, prior to the date of the adjudication. This no nullity; as the annualrent of the accumulated sum was decerned for, only from the date of the diligence.

No 14.

In a declarator of expiry of the legal; *Objected*, that the accumulation had been made at a term prior to the date of the adjudica-