1712. *February* 22.

ALEXANDER NAIRN of Drumkilbo, *against* ROBERT M'LELLAND.

No 2.
Effect of filling up, in the allowance, a greater ſum than in the decree.

IN the competition, betwixt Drumkilbo and Robert M'Lelland, creditors adjudgers of ſome lands in North Queensferry, belonging to William Liddel; Drumkilbo *objected*, againſt M'Lelland's adjudication, That, ſuppoſe it be more than year and day anterior to his, and the legal expired, yet it ſhould be reduced; at leaſt Drumkilbo ought to be brought in *pari paſſu* with M'Lelland: Becauſe, the allowance of M'Lelland's adjudication, as it ſtands recorded in the Bill-chamber, bears to be for L. 763 Scots; whereas, there was only due to him, at the date of the adjudication, 783 merks, which is the ſum in the decreet.

THE LORDS found the objection not a ſufficient ground to bring in both the adjudgers *pari paſſu*, but only to take off the expiration of the legal of M'Lelland's adjudication.

Fol. Dic. v. 1. *p.* 13. *Forbes, p.* 593.

1741. *February* 20. GUTHRIES *against* SUPERIORS.

No 3.
Abbreviates are required, not only of adjudications that came in place of apprifings, but of all other adjudications.

A COMMON bill of horning, againſt ſuperiors, upon an adjudication in implement, being preſented to the Ordinary on the bills; the Clerk of the bills ſtated the *objection*, to the Ordinary, That there was no abbreviate of the adjudication; and, therefore, he could not, without particular directions, write out the common deliverance, viz. becauſe the Lords have ſeen the decree marked, and the abbreviate recorded, conform to the act of Parliament.

Interlocutor.

The Ordinary having reported the objection, the LORDS were unanimous, 'That, upon the conſtruction of the act of regulations, abbreviates were required, 'not only of ſuch adjudications as came in place of apprifings, but of all other 'adjudications;' and ſo the clerk reported to be the practice.

A variety, however, of things occurred in the reaſoning on the Bench. And, *firſt*, it was obſerved, That, in no caſe, the want of an abbreviate was a nullity; and though, in competition, another, though poſterior adjudger, with an abbreviate, would be preferable, yet, as it was effectual againſt the granter, there ſeemed to be no good reaſon, why horning might not proceed upon it.

And, it being *anſwered*, That, though it was true, it was no nullity; yet, as it was certain, that there could have no charge proceeded againſt ſuperiors, upon an apprifing, without an allowance, it would appear to be the ſame in the caſe of an adjudication, wanting an abbreviate, when the ſtatute, introducing abbreviates, declares them to have the ſame effect as allowances had before.

It was *replied*, That there was no parallel; for the meſſenger, who was judge in the apprifings, could not give warrant for a horning, which was only authoriſed