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to remove all impediments standing in his way of bruiking and possessing these lands, whoever be the author of the rights called for. THE LORDS, for their farther clearing, desired to hear this point more fully debated in presence, before they should proceed to a decision, because it was a general case; and certifications are reputed odious in law, *et rapienda est occasio* to reponne parties leased against the same; though, on the other hand, it is the security and interest of the people, *ne lites fiant immortales*, and l. 13. C. De judic. sets a period both to civil and criminal actions; the first to be determined in three years, and the last in two; which pleads that certifications are both equitable and necessary.

Fol. Dic. v. 2. p. 203. Fountainhall, v. 1. p. 686.

1706. January 15.

LOCH against HOME.

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THREE several decrees of apprising, containing each of them a distinct Sheriff-fee, being extracted by the clerk in the apprising against three debtors bound all in one bond, were found null, in respect there was only one claim given in to the messenger, one letters of apprising, and one decree pronounced by the messenger.

Fol. Dic. v. 2. p. 205. Fountainhall.

*** This case is No 104. p. 3759. *voce* EXECUTION.

1709. February 15.

JAMES FORREST, Merchant in Edinburgh, against Mr JOHN CRAIG, Writer there.

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IN a competition betwixt Mr James Forrest and Mr John Craig, the LORDS found a second extract of a decreet of adjudication at the instance of George Marshal, author to Forrest, null, albeit conform to the minutes; in respect a first extract in other terms, and disconform to the warrant, had been judicially produced; and the second was amended without application to the Lords for that effect.

Forbes, p. 324.

1713. January 20.

ROBERT JOHNSTON of Keltoun, against GEORGE HOUSTON, Son to the Deceased Patrick Houston, Merchant in Glasgow.

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IN a process, at the instance of Robert Johnston against George Houston, for reducing a decreet *in foro*, holding the pursuer as confessed upon the verity of

a debt referred to his oath; the LORDS repelled this nullity, objected against the creet, That it was obtained at the instance of tutors nominate acting for George Houston their pupil, and no nomination of tutors produced therein; in respect the pursuit was in their name, founded on a decret dative, decerning them executors for their pupil, and a licence to them to pursue, procured before the commissaries, upon production of the nomination, which is *probatio probata*. THE LORDS also repelled this nullity, That the decret proceeds upon a licence to pursue, which excludes sentence till confirmation intervene, and yet doth not bear, that the debt was confirmed, or the confirmation produced; in respect the defender now produced the confirmation of a date anterior to the extracting of the decret; and though law requires the debt to be confirmed before extracting, there is no necessity to mention the confirmation in the decret.

Fol. Dic. v. 2. p. 204. Forbes, p. 648.

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1736. January 27. ADJUDGERS of Falahill against CUNINGHAM of Comrie.

THE first adjudication upon which charter and sasine had followed, and of which the rest were not within year and day, was challenged upon this ground, That the extracted decree of adjudication was disconform to the warrants. The extract bore, that the decree was simply in absence, whereas upon looking into the warrants it appeared that the decree was *in foro*; a production made by a third party of a right to the lands, in order to bar the adjudication; another production made by the pursuer, in order to take off the effect of the former production; interlocutors upon these productions, &c. It was answered, That though there might be some error in the form, there was none in the substance; the extract narrated the precise lands that were adjudged, and so no hurt to any mortal. Replied, The extractor's province is to give a faithful and exact account of the steps of procedure, and not to dress up processes in fancied shapes of his own; and if such liberties were allowed, extracts could bear no faith, which behoved to render them useless to the lieges. THE LORDS would have found the decree simply null; but the creditors having insisted in their objection *ad hunc effectum* only, to bring them all in *pari passu*, the LORDS found the decree informally extracted, and sustained the objection, to restrict the adjudger to a preference *pari passu* with the other adjudgers. See APPENDIX.

Fol. Dic. v. 2. p. 204.

No 330.

1746. July 2. MACLEOD of Geinzies against MACLEOD of Cadboll.

IN this cause, whereof mention is made in the decision, 21st December 1744, Macleod of Geinzies against John Mackenzie, *voce WITNESS*, it being proved that the said arrestment was impetrated by Cadboll;

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Decree was pronounced in name of the clerk for a fine.