

'The Court' adhered, and found Mr Burton liable in the expence of the answers, &c.

No 36.

Lord Ordinary, *Swinton*.
Clerk, *Menzies*.

For Common Agent, *D. Cathcart*.Alt. *Hay*.*Fac. Col. No 200. p. 480.**Davidson.*

1722. December 20. HENDERSON against GRAHAM of Kilmardinny.

AN adjudication being led upon several grounds of debt, it was *objected* against some of the bonds, That they were null, upon the head of usury, in regard annualrent was pactioned, from terms prior to the dates of the bonds, and yet no evidence given, that the debtor received the money at these terms; on the contrary, the bonds bearing the receipts of the money indefinitely, the present time only could be understood.—THE LORDS found the objection against the bonds, not sufficient to annul them, as usurious; but sustained it, to open the legal of the adjudication, and cut off the penalties and accumulations of the said bonds; and sustained the adjudications for the principal sums, penalties, and accumulations of all the bonds whereon the adjudication proceeded, except the bonds quarrelled.

No 37.
Usurious itipulation.

An adjudication restricted, as to bonds, on which more interest than appeared to be due, was charged; and yet sustained in full effect, as to other bonds.

* * * Here the case was cited, determined a year or two before, betwixt Halyburton of Newmains, and the Lady Monboddo; where an adjudication having been led upon a bond, without deducing the retention, betwixt Martinmas 1672 and 1673, which was a trifle, and by oversight; the Lords did reduce it to a security, for principal, annualrents, and necessary expences, not only as to that debt, but as to several others, against which no exception could be made.

Fol. Dic. v. 1. p. 9.

1724. June 12.

THE CREDITORS of RODERICK FORBES of BRUX, against Sir JAMES GORDON of Park, and JAMES ERSKINE, brother to Pittodrie.

IN the ranking of the creditors of BRUX, it was *objected* to the adjudications produced by Sir James and Mr Erskine, *imo*, That they were led for sums which were not in their persons, at the time when they charged their debtor's representative to enter heir in general to him; and therefore, as to such sums, they were void. *2do*, That the charter from the King, under the Great Seal, upon Mr Erskine's adjudication, was void, as flowing *a non habente potestatem*, in respect that the lands held of the late Earl of Mar; and on the 18th June 1718, at which

No 38.
An adjudication annulled, because the sums were not in the adjudger's person, at the time of charging the debtor's represen-