

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 decreet 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 decreet 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 decreet; and though law requires the debt to be confirmed before extracting, there is no necessity to mention the confirmation in the decreet.

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

No 329.

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;

No 331.
Decree was pronounced in name of the clerk for a fine.