

No 19. down his own debt, more than that of any third party, for whose behoof the adjudication may also have been led.

THE LORDS found the bill, and adjudication, in so far as it proceeded thereon, void and null; but found this not sufficient to annul the adjudication *in totum*, in respect the indorsation to the adjudger, bore that the bill was indorsed in trust, for behoof of the indorser*.

Fal. Dic. v. 1. p. 8.

No 20.

An adjudication proceeding, among other debts, upon a bill, and promissory note, with a fifth part more of them, in name of penalty; annulled *in totum*; although to the other debts, there was no objection.

1738. December 1.

AN adjudication proceeding, among other debts, upon a bill, and a promissory note, and adjudging the lands for payment of the liquidate penalty, contained in the other grounds of debt; and for a fifth part more of the said bill and promissory note, in name of liquidate penalty, though no penalty could be in the bill, and none was in the note; found null and void *in totum*; although it was much urged by some of the Lords, that, where an adjudication proceeded upon different debts, notwithstanding its being found null, as to one debt, it ought to be sustained at least as a security for the other debts, with respect to which there lay no objection to the diligence.

Kilkerran, (ADJUDICATION), No. 2. p. 3.

No 21.

Sums, not properly constituted, struck out of the accumulated sum, and the adjudication sustained, *quoad ultra*.

1739. January 26.

CREDITORS OF CATRINE, *against* BAIRD of Cowdam.

IT being objected to an adjudication, that the decree of constitution, upon which it proceeded, was null; in regard that it concluded against the debtor, upon no other passive title, than that of a charge to enter heir; and yet that part of the debts, therein decerned for, were acquired by the pursuer, after raising and executing the general charge; so that, with regard to these debts, the decree was without any foundation; THE LORDS sustained the objection, so as to strike these debts out of the accumulated sum; but not to annul the adjudication *in totum*.

Fal. Dic. v. 1. p. 7.

* The same case is thus mentioned by Lord Kilkerran.—An adjudication proceeding, among other debts, upon a bill which bore penalty and annualrent, was found void and null, only *quoad* that bill, and sustained as to the other debts; in respect the indorsation to the adjudger, bore that it was indorsed in trust for the behoof of the indorser.

Kilkerran, (ADJUDICATION.) No 2. p. 2.