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had been left blank in the decreet.

debts on which adjudication was fought; yet the accumulate ſum was blank in the decreet of adjudication, and abbreviate of it. The creditors did not inſiſt upon reducing the adjudication *in toto*, but only to reſtrict it to a ſecurity for the principal ſums, annualrents, and expences of deducing the adjudication.

Anſwered for Ann and Agnes Auchinlecks, The objection was not good to ſtrike them off from the penalties and accumulations of the ſum in their adjudication. The act 1672, which preſcribes the method of adjudications, does not require the amount of the principal ſum, annualrents, and penalties of the adjudication, to be expreſſed in one ſum; neither is there any warrant in the ſignature of the judge for ingroſſing that amount: And though the extractors are in uſe to fill it up in extracting the decreet, yet there is no neceſſity to do it, the ſame being merely an operation of figures, in which there can be no miſtake, and which any one may do.

Replied for the creditors, Compriſings gave originally as much land as was equal to the avail of the ſum; afterwards they gave a fifth part more; and therefore the ſum ought to have been aſcertained and expreſſed when the decreet was pronounced. Beſides, as the adjudication becomes a real burden upon the lands, it ought to appear with certainty from the records, how much the lands are burdened.

'THE LORDS found, That the accumulate ſums, not being filled up, is no nullity in the adjudication; and reſtricted the adjudication to a ſecurity for the principal ſum, annualrents, and expences of deducing the adjudication.'

For Auchinlecks, *Arch. Murray.* For the Creditors, *Bruce.*

Fol. Dic. v. 3. *p.* 9. *Fac. Col. No* 58. *p.* 96.

Dalrymple.

1755. *July* 6.

FORBES of Culloden and Others, *againſt* The REPRESENTATIVES of DAWSON of Hempriggs.

No 13.
An adjudication found null; the decree of conſtitution having proceeded on a general charge to enter heir to a father, inſtead of the grand-father, who had been the proper debtor.

IN the ranking of the creditors of Clava, it was *objected* to an adjudication, That it proceeded upon decreets of conſtitution taken againſt an infant grandſon, upon a general charge to enter heir, not to his grand-father, who was the debtor, but to his father, againſt whom the debts had never been conſtituted.

Pleaded for the adjudger, That the ſummons of conſtitution did particularly ſet forth the grounds of debt, viz. bonds and bills granted by Hugh Roſs of Clava, in the 1716; and though, by miſtake, he is called the defender's father, whereas truly he was his grand-father; yet, as both were of the ſame name, that erroneous addition, with reſpect to the relation he ſtood in to the defender, cannot hurt the diligence, he being ſufficiently deſcribed as granter of the bonds and bills;

No 13.

and as the defender knew this deſcription could only apply to his grand-father, he was therefore fully certiorated of the perſon to whom he was to enter by that deſcription; and *utile per inutile non vitiatur*. 2*do*, Hugh Roſs the father, was liable *paſſive* to the grand-father's debts; and though the grand-ſon had only been charged to enter heir to his father; yet he would, by not renouncing, have become liable for all the debts due by the father, whether of his own contracting, or as repreſenting the grand father. 3*tio*, At leaſt the adjudication ought to be ſuſtained as an adjudication *cognitionis cauſa*, agreeable to the deciſion 27th February 1684, Dunlop againſt Brown, (*See* p. 46. Quarto Dictionary,) and to the judgment given in a late caſe, in the ranking of the creditors of Kinminity.*

Anſwered for the other creditors, That there was undoubtedly a very material error in the form of leading of this diligence, which muſt be fatal to it in a competition among creditors; and that there was ſomething more here than a miſtake of the deſignation: For, in the letters of ſpecial charge which followed upon the decreets of conſtitution, the grand-ſon is charged to enter heir to both father and grand father. To the *ſecond*, That the paſſive title there mentioned, might have availed to eſtabliſh theſe debts *paſſive* againſt the father, either upon a charge to enter heir, or upon a proof of the paſſive titles; but they having never been conſtituted againſt him, could not, by any form known in the law, be transferred againſt the infant grand-ſon, upon a general charge to enter heir to him. To the *third*, That the caſes quoted are foreign to the purpoſe. In them the decreets of conſtitution were in every reſpect regular and formal, but were obtained againſt infants in abſence, who were therefore entitled to be reponed in ſo far as they had not renounced, but no farther; as upon a renunciation being produced, decreet of conſtitution muſt have gone forth againſt them: But here the decreets of conſtitution are *funditus* void, as proceeding upon an erroneous general charge.

'THE LORDS found the decreet of conſtitution void, and conſequently the adjudication following thereon null.'

Act. *Lockhart.* Alt. *Brown & Ferguſon.*

Fol. Dic. v. 3. *p.* 7. *Fac. Col. No* 155. *p.* 233.

Walter Stewart.

1784. *June* 27.

The COMMON AGENT in the ranking of the Creditors of Pinmore, *againſt* JEAN and FERGUSIA KENNEDIES.

No 14.
Adjudication of a tack ſuſtained, though the date, the

JEAN and FERGUSIA KENNEDIES, adjudged from Robert Kennedy of Pinmore, 'all and hail a tack, dated of the lands of Daldowie

* There is a caſe in this ranking, collected p. 129. of this Volume, and another under Huſband and Wife. See General Alphabetical Liſt of Names.