

modern practice, into a mere security for what is justly due. And to that extent the attachment is supported in equity; especially in a question with the heir of the debtor, notwithstanding any defect, arising either from an informality in its execution, or from an undue charge against the debtor; *Kilkerran*, 6th November 1747, *Creditors of Ross against Balnagown, and Davidson*, (No 27. *b. t.*) In this instance, therefore, it would be sustained as a security for the principal sum, the annualrents, and liquidate penalty, accumulated at the date of the decret of adjudication.

THE LORDS being unanimously of opinion, that this adjudication was exceptionable in both respects; the only question was, to what degree it ought to be restricted? By one judgment, it was sustained as a security for the principal sum, annualrents, and liquidate penalties. But, upon advising a reclaiming petition, with answers, the LORDS, moved chiefly by an appearance of rigour in the measures which had been pursued in this case by the creditor, found, 'That the adjudication could only subsist as a security for the principal sum contained in the bond, and interest due thereon, to be accumulated at the date of the decret.'

Lord Reporter, *Westball*,

For the Apparent Heir, *Rolland, David Williamson*.

Craigie.

For Sir James Nasmyth, *Hay, Honyman, Mark Pringle*.

Clerk, *Hemp*.

Fol. Dic. v. 3. p. 5. Fac. Col. No 130. p. 204.

* * This case was appealed. The following was the judgment of the House of Lords:

'ORDERED and ADJUDGED that the appeal be dismissed, and the interlocutors complained of, be affirmed.'

For Sir James Nasmyth, Appellant, *A. Wight, Wm Adam*.

For Apparent Heir, Respondent, *Ilay Campbell, Ar. McDonald*.

1784. February 4.

THE APPARENT HEIR of JOHN PORTEOUS *against* SIR JAMES NASMITH.

SIR JAMES NASMITH acquired right to three fourths of a bond granted by John Porteous; and as he was in treaty with the creditor on the remaining fourth, which he afterward acquired, he deduced an adjudication for the whole debt.

By one interlocutor, the LORDS found the adjudication null *in toto*. But, upon advising a reclaiming petition, with answers, a distinction was adopted between a *pluris petitio*, when the sums adjudged for were not owing, or, which was the same thing, not vouched in a legal manner, and when the debt was truly due, but not to the person who had obtained the adjudication.

THE LORDS found, 'That the adjudication led at the instance of Sir James Nasmyth, was to subsist as a security for the three fourths of the debt, and penal-

No 33.

April 4. 1785.

No 34.

It is a *pluris petitio*, altho' the whole of the sums adjudged for be due, if not due to the adjudger.

No 34.

ties effecting, which were in Sir James Nasmyth's person when the diligence was led.'

Lord Ordinary, *Westball*.
Craigie.

Partibus ut supra.
Fol. Dic. v. 3. p. 6. Fac. Col. No 142. p. 223.

* * This case was appealed. The following was the judgement of the House of Lords:

April 4. 1785.

' ORDERED and ADJUDGED, That the appeal be dismissed, and the interlocutors complained of, be affirmed.'

Partibus ut supra.

1794. March 7.

The CREDITORS of Neil Macneil, *against* JAMES SADDLER.

No 35.

An adjudication found to be null, which was led upon a decree for payment of the random sum of L. 10,000; although it reserved all objections *contra executionem*; no proof of the debt having been produced when the decree was obtained; and the sum really due having turned out to be only L. 800:10:7 4-12ths, currency of St Christopher's.

WILLIAM SADDLER, of the island of Nevis, merchant, in 1758, entered into copartnership with Neil Macneil. Their trade was carried on in the island of St Christopher's, under the management of the latter, who, upon the dissolution of the company, in 1761, was entrusted with winding up their affairs.

In 1763, Macneil eloped from St Christopher's, carrying with him effects belonging to the company, to a considerable amount.

Saddler, knowing that Macneil, at this time, had heritable bonds, for L. 6722 sterling, over the estate of Taynish, in Scotland, sent a power of attorney to a man of business in Edinburgh; and, at the same time, desired him to attach these bonds for payment of the large balance which he then imagined, Macneil owed him. Having, however, no access to the company-books, which were in Macneil's custody, he had no means of ascertaining the amount of his claim against him. His information to his agent here was, consequently, in very general terms: 'That Macneil, after receiving every shilling he could, had eloped from this island, and carried with him L. 7000 or L. 8000, and had taken protection in the Danish island of St Croix; where he is not only protected, by that government, in his person, but his effects; by which his creditors will be defrauded of their money; amongst whom, I am the most considerable sufferer.'

Without receiving any farther information from Saddler, his agent executed an arrestment, *jurisdictionis fundandæ causa*; and, on the 24th February 1764, raised a summons of constitution against Macneil, for payment of the random sum of L. 10,000; which, it was stated, 'would appear to be due to the pursuer, upon a just count and reckoning.'

When the summons came into Court, appearance was made by the defender's attorney, who denied the libel; and stated, 'That it was led for a random sum, unsupported by evidence.' To which it was answered, That there were already adjudications led against the defender; and that, therefore, in order to put the