

found the submission and decreet-arbitral were only probable by writ, and not by the arbitrators' oaths ; albeit the same was within 100 pounds Scots.

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1666. *November 15.* GEORGE SKEEN *against* JAMES CHRYSTESON.

IN an action of adjudication, pursued at the instance of George Skeen, against James Chrysteson, for adjudging the right of an annualrent belonging to umquhile David Chrysteson, his debtor ; compearance being made for the said James, and he ALLEGING there could be no adjudication, because he stood infest in the property of the lands, out of which the annualrent, craved to be adjudged, was taken ;—

The Lords repelled the allegiance *hoc loco* ; and adjudged and found, That adjudications should not be stopped, they being only granted *periculo petentis* ; but prejudice to the defender to propone all his lawful defences *in causa*.

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1666. *December 4.* SIR ALEXANDER URQUHART OF CROMARTIE *against* WALTER CHIRRON.

UMQUHILE Sir Thomas Urquhart of Cromartie, having borrowed from umquhile Mr William Lumsdain, the sum of 4000 merks, disposes, for his security and until he be paid, a tenement of land within the burgh of Banff, with the salmon-fishing upon the water of Doveran ; and, in the reversion, it is expressly provided, That it shall not be lawful to the said Sir Thomas to redeem the foresaid lands, but by consignment of the principal sum, and the haill bygone annualrents that should not be satisfied by his intromission. Sir Alexander Urquhart having right, by apprising, to the said lands and fishing, and reversion thereof, has intented action, for count and reckoning, against Walter Chirron ; who has now right to the wadset, for the surplus duty of the said fishing, for all years and terms since the date of the wadset ; in regard the foresaid right of wadset granted to Lumsdain, was only in security and repayment of his money. After dispute in the cause, the Lords found, that the foresaid right of wadset, being only a right for security, could not authorise the defender's author to bruik the haill duties of the foresaid fishing, or to intromit therewith ; and therefore, ordained the defender to condescend by what right he entered to the possession of the said fishing ; and how long his author did possess the same ; and what the yearly rent did extend to.

The defender CONDESCENDED as follows, *viz.* :—That he entered to possession of the said fishing, or to intromit, *in anno* 1650 ; and that, by virtue of the foresaid right of security, disposed to him by Mr William Lumsdain, son to umquhile Mr William. And otherways, that he had another right from the said Sir Thomas :—*In anno* 1657, 700 merks were eiked to the reversion ; of which right there is a power to possess till the redemption ; and that the fishing was worth 13 barrels of salmon yearly.

It was ALLEGED for the defender, That he could not be liable to count for the