

1739. February 14. SIDNEY against BAILIE.

WHERE an adjudication was led, upon a decree of constitution, wherein annualrents were decerned upon promissory notes, from their dates, though payable only upon demand; the same was, even in a competition, found relevant, only to restrict the adjudication to a security, for principal and annualrent.

Kilkerran (ADJUDICATION), No. 4. p. 4.

No 22.

1739. July 3.

CREDITORS OF PROVOST CUNNINGHAM against MONTGOMERIE.

Two parties being bound in a bond, containing an obligation to relieve one another, *pro rata*, one of them paid the debt, took an assignation to the whole, and thereafter a decret of cognition, against the other party's heir for the one half. But, in the adjudication, which narrated the assignation and decret of constitution, the lands were adjudged for payment of the whole sum. In a ranking, the other creditors objected this *pluris petitio*, and insisted to have the adjudication reduced *in totum*. The LORDS considered this as an innocent mistake, and sustained the adjudication as a security for the principal sum, and annualrents, truly due, to be accumulated at the date of the adjudication, but without penalties, or even necessary charges*.

Fol. Dic. v. 1. p. 8.

No 23.
An adjudication restricted to a security, on account of a *pluris petitio*, proceeding from mere oversight.

1743. February 4.

OBJECTED to an adjudication, that, bearing date in July 1706, it decerned for bygone feu-duties, before its date.—The LORDS sustained the adjudication as a security, for the principal sum and annualrents.

Fol. Dic. v. 3. p. 4. from MS.

No 24.

* This case is thus stated by *Kilkerran*:—One of two parties, bound in a bond, having paid the debt, and taken assignation to the whole, and a decree, *cognitionis causa*, against the heir of the other for the half; obtained thereupon a decree of adjudication; wherein, though the decree *cognitionis causa*, which decerned, as has been said, only for the half, was, among other grounds of debt, libelled on; yet, in extending the accumulated sum, the whole of this debt was taken in.—This, the other creditors insisted on, in the ranking, as a total nullity; but as it was obvious, that this had been a mere oversight in the writer, the adjudication was sustained, only as a security for the principal sum, and annualrents, truly due, accumulated at the date of the adjudication, but not even for necessary charges.

Kilkerran (ADJUDICATION), No 6. p. 4.