

(FORMALITIES of the DILIGENCE.)

No 8. rating it to be produced, and so a complete diligence by itself; and the pursuer is not obliged, *post tantum temporis*, to produce the letters of special charge.

THE LORDS sustained the nullity, in so far as to void the adjudication as to the accumulations and expiry of the legal, reserving to be heard, whether it is void *in toto*.

*Fol. Dic. v. 3. p. 7. C. Home, No 174. p. 290.*

1743. February 4.

MAXWELL against MAXWELL.

No 9.

A bond is granted to a person, and the heirs of his body, whom failing, to his sister. An adjudication led by her, without a service to ascertain that her brother had left no heirs of his body, is restricted.

MAXWELL of Friarscarfe, granted bond to Stephen Irvine, and the heirs of his body; whom failing, to Margaret, his eldest sister. She, upon the death of her brother, assigned the bond to one Bentruck; Bentruck conveyed it to Maxwell of Barncleuch, son to the said Margaret. Maxwell of Barncleuch, led an adjudication upon this bond, against the lands of Friarscarfe. It was *objected*, in an after question concerning the rights of these lands, that the adjudication was null, *imo*, because it bore date 21st January 1693, and yet interest was accumulated at Candlemas 1693; *2do*, That no service appeared of Margaret to her brother to ascertain the failure of issue of his body.

THE LORDS restricted the adjudication to a security for principal, interest, and necessary expences.

*Fol. Dic. v. 3. p. 8. from MS.*

1751. December 10.

Sir THOMAS MAXWELL against JAMES PATERSON.

No 10.

A party obtained decree for two bonds. In a special charge, he narrated the bonds, and not the decree. Adjudication notwithstanding sustained; the decree having been prior to the charge.

JAMES PATERSON of Whiteside, pursued Alexander Murray of Drumstrenchall, for two bonds granted by his predecessor, for which he obtained decret before the steward of Kirkcudbright; and charged him to enter heir in special, narrating in the letters the bonds, but omitting to mention the decret: And afterwards led an adjudication, founding on the decret and special charge.

*Objected* for Sir Thomas Maxwell of Orchardtoun, a postponed adjudger, the adjudication is null; the special charge, which was the ground of it, proceeding only on the bonds, and not on the decret, whereby the defender became liable therein: It is not enough a person have in him proper titles to support his diligence, if he do not found it upon them.

The Lord Ordinary, 26th November, 'Having considered the objection, together with the letters of special charge objected against, and the decret of constitution; repelled the objection, that the said decret of constitution was not narrated in the letters of special charge, in respect that the same was obtained prior to the date of the said letters.

And the LORDS refused a bill, and adhered.

*Pct. A. Pringle.*

*Fol. Dic. v. 3. p. 7. D. Falconer, v. 2. No 246. p. 301.*