

(RANKING OF ADJUDGERS AND APPRISERS.)

1769. July 12. Competition of CREDITORS of AUCHINBRECK.

No 39.
Penalties in adjudications on heritable bond and infestment, ought not to be restricted to the neat expences.

CREDITORS, by heritable bond and infestment, having also led adjudications for their principal sums, arrears of interest, and penalties accumulated; the postponed creditors *insisted*, That the penalties, thus adjudged for, should be restricted to the neat expences, this being the usual rule with respect to conventional penalties in bonds; but the LORDS being of opinion, That creditors had a right to adjudge for their penalties, refused to restrict.*

Fol. Dic. v. 3. p. 15.

1772. CREDITORS of MURRAY of Stanhope, *against* the EARL of MARCH.

No 40.
Found as above.

FOUND as in the above case. Here, however, it appeared, that the adjudger had lost, by lying out of his interest, a sum more than equal to the whole penalty.*

Fol. Dic. v. 3. p. 15.

1787. December 8. SINGLAIR and DOULL, *against* the EARL of CAITHNESS and INNES.

No 41.
How an adjudication becomes effectual, in terms of the act 1661, when led upon the personal obligation in an heritable bond. When restricted to a security. When, being led against the ancestor, it stands in opposition to others led against the heir for the ancestor's debt.

SINGLAIR of Affery, in the year 1761, granted an heritable bond and infestment over his estate to Innes of Sandfide; who, in the year 1770, led an adjudication, which was afterwards made effectual by a charge against the superior, for the principal sum, and for the annualrents and penalties incurred since the constitution of his security.

Affery died in the year 1771, and his son made up titles to the estate, by precept of *clare*, and infestment. In 1774, Sinclair of Stempster and Patrick Doull, creditors of old Affery, led adjudications; and, within a year after them, the Earl of Caithness, and Innes of Scotscaldar, likewise adjudged for debts due by old Affery.

A ranking of the creditors, and sale of the estate of Affery, having been commenced, Mr Innes of Sandfide's adjudication, on account of a trifling *pluris petitiono*, was restricted to a security for the principal sums, annualrents, and necessary expences, accumulate at the date of the adjudication.

* The particulars of No 39. and No 40. which have not been reported, shall be discovered from the process, and given in the Appendix to the Title ADJUDICATIONS.