

1770. January 16. CAPTAIN JOHN M'NEIL *against* JOHN BUCHANAN.

ADJUDICATION.

Formality and regularity of a Decreet of Constitution, and of a charge to enter Heir. The *pari passu* preference of the Statute 1661, c. 62, applies to the Adjudication of an Adjudication.

[*Fac. Coll. V. 41 ; Dict. Appendix I.—Adjudication, No. 2.*]

MONBODDO. The adjudication was vested in Margaret by the general service, and properly carried from the *hereditas jacens* of Margaret, by the general special charge against John to enter to Margaret. Buchanan has used the same sort of diligence ; but he has omitted to make John his debtor ; and, consequently, his adjudication is null.

KAIMES. Buchanan's diligence is proper. In order to make a man my debtor, I give a general charge to him to enter to his predecessor who was my debtor. If he is not able, or not willing to pay, I look about for any particular subjects, and then I charge him to enter to that particular subject : this is called a general special charge ; and such was the form here observed.

AUCHINLECK. Buchanan could not charge John to enter to Margaret when he constituted his debt, for Margaret was not his debtor. After he had constituted his debt, it was necessary for him to charge John to enter to Margaret in that particular subject, in order to carry the subject in the *hereditas jacens* of Margaret as heir of Hugh.

PITFOUR. Of the same opinion. Had John renounced, there might have been difficulty. The objection to the *pari passu* preference has been often repelled ; and lawyers ought not to plead against established points.

PRESIDENT. Of the same opinion. We certainly will not do anything at this time of day to narrow the excellent statute 1661. The objection to Buchanan's adjudication—that the letters of general special charge were signeted six days before the decret was extracted—has no solidity ; for the decret was pronounced long before, and had been read in the minute-book, and no stop put to it. Were we to sustain this objection, the consequences might go deep.

On the 16th January 1770, “ The Lords repelled the objection to Buchanan's adjudication, and found that his adjudication and M'Neil's must come in *pari passu*.”

Act. P. Murray. Alt. J. Dalrymple.
Rep. Hailes.