

1779. *January 23.* COLVILLS PETITIONERS.

No 21.
An entailed
estate may be
adjudged.

MESSRS COLVILLS, being notour bankrupts, a creditor brought an adjudication against them, in which a term taken for producing a progress, was circumduced. Decree was pronounced and extracted; all was done regularly, but as quickly as the forms of Court would admit of. Messrs Colvills, by petition, stated, That they were in danger of incurring an irritancy, as their estate was strictly intailed: And they complained of the precipitancy with which the decree had been taken.

THE LORDS refused the petition; not only because the decree was irregular; but in respect that the petitioners being bankrupt, were not entitled to produce a progress; and that creditors are entitled to adjudge their debtors estate, whether it be entailed or not.

Fol. Dic. v. 3. p. 4.

1629. *February 26.* ANONYMOUS. *Durie, p. 430.*
See ADJUDICATION, Contra hereditatem jacentem. No 3. p. 44.

1639. *January 29.* GRAHAM against PARK. *Durie, p. 870.*
See HUSBAND and WIFE.

1684. *February 1.* ANDERSON against Anderson's TENANTS.
President Falconer, p. 51.
See COMPETITION.

1743. *June 10.* ——— against The E. of LAUDERDALE.
Fol. Dic. v. 3. p. 9.
See HEIR APPARENT.

See the General Alphabetical List of Names, for the cases of STAIR, CASSLIS, and SUTHERLAND.

the true state of the matter in debate. And the question ought to be, not whether the office be adjudgeable? but whether the emoluments be adjudgeable? When the case is considered in this light, all difficulties vanish. The *jus mariti* as far as personal, considered as the authority a man has over his wife, is certainly not adjudgeable. But the emoluments of the *jus mariti* may be adjudged. Precisely in the same manner, the office of keeper of the register of sasines being personal, is not adjudgeable. But the emoluments of that office may be adjudged. And if such adjudication be competent, it follows, that the deputy, instead of accounting to Mr Falconer for the emoluments, must account to the adjudger. Possibly no depute may be named; but in that case, it is Mr Falconer's duty to name a deputy with consent of the adjudger. And if Falconer refuse to do this act of justice to his creditor, it becomes the duty of the Court of Session in his place to name a depute. To conclude, it appears to me that wherever there is power of deputation, the emoluments may be adjudged however personal the office may be. Otherways, where there is no power of deputation, which is the case of the supreme Judges.

Selected Decisions, No 159. p. 219.