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The following are the terms of the grand decerniture: ' The Lords of Council and Session foresaid, have adjudged, decerned, and declared, and hereby adjudge, decern, and declare, all and fundry the lands and others above-mentioned, with all right and title competent to the said Thomas Landale, &c. to pertain and belong to the said John Gibson pursuer, his heirs and assignees heritably, but redeemable always, conform to the act of Parliament, in payment and satisfaction of the sums of money, principal, annualrents, liquidated penalty, and expences above and under-written.' Then the debts are *seriatim* mentioned, and *seriatim* and *separatim* accumulated.

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It may be proper to compare the above libel, sentence, and decerniture, with those in the case of Lord Camelford's Trustees against Major Maxwell of Dalwinton, referred to above, where the decision was different. That case, not till now reported, follows.

1789. July 28.

Lord Camelford's TRUSTEES *against* MAXWELL of Dalwinton.

LADY CAMELFORD'S portion of L. 40,000, was vested in trustees, who had power to lend the money on mortgage.

For L. 11,000 of this money, Hugh Maxwell, as commissioner for Major William Maxwell, his brother, granted an heritable bond over the estate of Dalwinton.

L. 3000 of the principal sum having been paid, upon assignation to the bond to that extent, an adjudication was led for L. 8000, the balance of principal sum, with interest and penalty, libelling in the following terms: ' There now only remains due to the said John Sargent and Henry Dagge, (the trustees) in virtue of the said heritable bond, a principal sum of L. 8000, with the interest of the whole L. 11,000, from the date of the said heritable bond, to the date of the said assignation; deducting only L. 2112:15:4, paid at different times, to account of said interest; and whole interest of the said balance of L. 8000, from and after the date of the said assignation, during the not-payment: And albeit the foresaid principal sum of L. 8000, and annualrents, be yet resting and owing, and unpaid; and that the said John Sargent and Henry Dagge, have oft and divers times, desired and required the said Major William Maxwell, to make payment to them of the same; yet he not only refuses so to do; but also will not secure them thereanent; wherefore, &c. such parts and portions of the lands, and others, after-specified, pertaining, &c. ought and should be decerned and declared, to pertain and belong to the said John Sargent and Henry Dagge, their heirs and assignees, as will be worth and will satisfy the said John Sargent and Henry Dagge, of the sums of money, principal and interest, before specified; and a fifth part more, in respect they will thereby want the use

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of their money, and be obliged to take land for the same; and that over and above the composition to the superior, and expences of infestment; and probation ought and should be led anent the rental and value of the lands so to be adjudged, in manner specified in said act of Parliament. As also the said Major William Maxwell, ought and should be decerned, by decret foresaid, to exhibit and produce before the said Lords, the whole writs and evidents, &c.; and in case the right be good, to purge, &c. or otherwise, all and singular the lands, and others, after-specified, pertaining heritably, or otherwise, to the said defender, his predecessors and authors, viz. all and whole, &c. ought and should be adjudged from the said Major William Maxwell, and all others having or pretending right thereto, and decerned and ordained to pertain and belong to the said John Sargent and Henry Dagge, and their forefairs, heritably, and in payment and satisfaction to them, of the foresaid sums of money, principal and annualrents, and liquidate expences, respectively before-written, *as the same shall extend and be accumulated at the date of the decree of adjudication* to follow hereon; and of the annualrents of the said extended accumulated sums, from the date of the said decret, during the not-redemption thereof; and that over and above the composition to the superiors, and expences of infestment to follow hereon.

The interlocutor of the Lord Ordinary was: 'Adjudges, decerns, and declares, in terms of the libel.'

The decret was extracted in the following terms: 'Adjudged and hereby adjudge (the lands, &c.)—decern and declare the same to pertain and belong to the said John Sargent and Henry Dagge (the trustees), and their forefairs, heritably, in payment and satisfaction to them, of the respective sums of money, principal, annualrents, and liquidate expences before-specified, contained in, and arising due upon the heritable bond, and bond of corroboration thereof before-mentioned, libelled on; extending, in hail, *when separately accumulated at the date hereof*, to the respective-sums following, viz. the interest of L. 11,000, being the original principal sum contained in the said heritable bond, granted to the pursuers by the said Hugh Maxwell, from the 21st June 1774, the date thereof, to the 12th October 1780, the date of the posterior assignation to L. 3000 of the said principal sum, as before-specified, (after deducting from said interest, L. 2112 : 15 : 4, paid at different times to account thereof,) to the sum of L. 1357 Sterling money, *salvo justo calculo*.—*Item*, The foresaid sum of L. 8000 Sterling still remaining due, of the said original principal sum of L. 11,000, money foresaid, after deducting the said L. 3000, assigned by the pursuer in manner foresaid. *Item*, The interest of the said remaining principal sum of L. 8000, from and since the said 12th October 1780, the date of the said assignation; extending the said interest, at the date hereof, to the sum of L. 690 Sterling money, *salvo justo calculo*. *Item*, The sum of L. 1600 Sterling, as a proportional part, effecting to the said remaining principal sum of the liquidate penalty, contained in, and due by the foresaid heritable bond, and bond of corroboration; and incurred through failzie: And in payment and satisfaction

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* of annualrent of the said extended accumulated and other sums, from the date hereof, during the not-redemption thereof; and that over and above the composition to superiors, and expences of infestment to follow hereon.'

Lord Carnelford's trustees brought on a sale of the estate, and ranking of the creditors.

Major Maxwell objected, in the ranking against the adjudication led by the trustees, That it ought either to be set aside *in toto*, or at least restricted to a security for the principal sum and interest, on account of *pluris petitio*.

The Lord Ordinary found, That the trustees had adjudged for a sum of interest more than was due; and for another sum of interest which had been paid to them; and ordained the parties to prepare informations, to be reported to the Court, upon the effect of these two instances of *pluris petitio*.

It was *pleaded* for the trustees, That the adjudication was articulate, and, consequently, that the instances of *pluris petitio*, ought only to affect the adjudication with regard to those articles to which they were applicable.

It was *pleaded* for Major Maxwell, That although it were to be admitted, that where an adjudication contains separate accumulated sums, arising from *different debts unconnected with each other*, it should be considered in the same light as if each particular debt had been made the subject of a separate process of adjudication; and that, of course, in such a case, a *pluris petitio* ought only to affect that particular accumulated sum which was overcharged; yet the rule of law ought to be very different, when all the accumulated sums, though kept separate, *arose out of one and the same debt*. The trustees have adjudged the estate for more than was due to them, upon the ground of debt on which their adjudication proceeded; this, in strict law, ought to have occasioned the adjudication to be set aside *in toto*. The adjudication, though particular in its arrangement, is in reality but one adjudication upon one ground of debt; of course, therefore, the *pluris petitio* ought, at least, to be allowed its usual equitable effect, of occasioning the adjudication to be restricted to a security for the principal sum, and interest; or for the principal sum, interest, and necessary expences accumulated at the date of the adjudication.

The following was the interlocutor of the Court.

Upon report of Lord Alva, and having advised the mutual informations for the parties, the LORDS find, That the two instances of *pluris petitio*, being L. 36: 3: 3, and L. 24: 2: 2, can only affect the accumulate sum in which they are included, being L. 1357, as the balance of annualrents claimed at the date of the decret of adjudication: Find, they must be deducted from that accumulate sum; and that the trustees of Lord Carnelford are to be ranked for the balance thereof, and for the other accumulate sums of L. 8000, L. 690, and L. 1600, with interest upon the whole from the date of the decret of adjudication; and remit to the Lord Ordinary to proceed accordingly.'

Major Maxwell offered a reclaiming petition, which was answered by the trustees; upon advising which, the LORDS found, 'That the effect of the two in-

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stances of *pluris petitio*, entitles the petitioner not only to have deduction from the accumulate sum of interest, but also to cut off the interest claimed upon the balance of that accumulate sum from the date of the decret of adjudication, down to the term from which the price of the estate now sold bears interest, and refused the petition *quoad ultra*; and remitted to the Lord Ordinary to proceed accordingly.

It appears that in this case, the separation of the articles in the decree, was the operation of the extractor only, not the act of the judge; in the same manner as in the case of Landale against Carmichael. But the distinction had not at that time been thought of.

Almost all the cases recorded in this Dictionary relative to *pluris petitio*, under the division 'Of the DEBT which is the FOUNDATION of DILIGENCE,' were quoted in the argument.

Major Maxwell had likewise raised an action of reduction of the bond, on the head of usury; because one of Lord Camelford's trustees, viz. Dagge an attorney, had taken a large premium for agreeing to the loan; but the Court held, that Lord Camelford not having been himself accessory, could not be affected by this illegal act of his trustee. (See USURY.)

Lord Ordinary, *Alva*.

For the Trustees, *Blair, Abercromby, Wolfe Murray*.

For Major Maxwell, *Wight, H. Erskine, Dalzell*.

Geo. Robertson, W. S. Agent.

John Syme, W. S. Agent.

* * The following case likewise regards the effect of *pluris petitio*:

1797. June 9.

The COMMON AGENT in the Ranking and Sale of John Mackinnell's property,
against THOMAS GOLDIE.

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An adjudication led on a decree for a random sum, set aside on account of a *pluris petitio*.

JOHN MACKINNELL was the managing partner, and kept the books of Carlisle, Mackinnell, and Company. The concern having been unsuccessful, it was dissolved in 1782; but no settlement then took place with Mackinnell, and he died a few years after, leaving both his own affairs, and those of the Company, in disorder.

At his death, he was considerably indebted to the Company; but from the irregular manner in which he had kept the books, it would have required a tedious investigation to have ascertained the amount.

His other creditors having immediately proceeded to adjudge his heritable property, George Macmurdo, the surviving partner of the Company, brought an action of constitution against his representatives, for the random sum of L. 1500, as the amount of the debt which he owed the Company, with interest from the