

much, or what part of the lands apprifed, fhould be retained by the apprifet, to fatisfy what might be truly due; and therefore, it was neceffary that the lands fhould be of new apprifed. Yet, as in adjudications there is no value put upon the lands, but great eftates are daily adjudged for trifling fums, there was nothing in law, or the nature of the thing, why, notwithstanding of a *pluris petitio*, the adjudication fhould not fubfift for what is truly due; as well as an infeftment of annualrent, granted for two debts, would fubfift, for the one debt truly due, although it fhould afterwards appear, that the other debt had been paid, before the annualrent-right was granted.

And, upon this reasoning, the adjudication was in this cafe fufained, as a fecurity for the L. 1284, contained in the fitted account; though hardly can a cafe occur, where lefs can be faid to excufe the *pluris petitio*.

Fol. Dic. v. 3. p. 5. Kilkerran, (ADJUDICATION.) No 17. p. 17.

1751. December 3.

CREDITORS OF CASTLE-SOMERVILLE, *against* Mr JOHN LOOKUP.

DAVID FRENCH of Frenchland, borrowed 2000 merks; for which he, together with James Somerville of Caftle-Somerville, and Robert Thomson, Merchant in Glasgow, granted bond, 7th February 1719.

Robert Thomson paid, and obtained affignation, 15th February 1722, in thefe terms: 'That he might obtain payment and relief of the hail fums from the faid David French; and of the half from the faid James Somerville;' whereon he adjudged, 1723, David French's eftate, for the accumulate fum of 1896 pounds: This he difponed to Mr John Lookup, minifter of Calder, who recovered 697 pounds out of the principal debtor's eftate, at Whitfunday 1731.

Mr John Lookup, 4th December 1734, adjudged the eftate of Caftle-Somerville, for the half of the fums in the bond; with intereft from the date, and penalty effeiring thereto.

In the ranking of the creditors of Caftle-Somerville, it was *objected* to this adjudication, That it was led for more than was due by James Somerville, co-cautioner with Robert Thomson, feeing Mr Lookup had received part of the debt out of the principal debtor's eftate; which ought to be applied equally to the relief of the two cautioners.

Pleaded for Mr Lookup, Being affigned to the bond, he was in place of the original creditor, and entitled to adjudge for the whole debt; and, though againft his co-cautioner, he might be obliged in equity to reftrikt his demand to the half; yet this ought not to annul his diligence, which in law he was entitled to lead.

2do, Somerville not having adjudged French's eftate, can have no advantage from what was drawn out thereof, in virtue of the accumulation made by Thomson's diligence; and therefore, the intereft received by Mr Lookup, on the fum in his adjudication, cannot be ftated, in fo far as it rofe on the accumulation.

No 27.

No 28.

A cautioner paid, for the principal debtor. He obtained partial relief out of his eftate. He adjudged the co-cautioner's eftate, for the half of the original debt, not the half of the balance. The adjudication reftrikted.

No 28.

3tio, Suppose Mr Lookup, in virtue of his adjudication on Frenchland's estate, had drawn out thereof any sum, short of the half of the debt, he might have adjudged on Castle-Somerville for the other half, to secure himself to the extent of the relief Somerville should be found owing him.

Pleaded for the other creditors: Mr Lookup had, at leading his adjudication, received payment of part of the debt, out of the principal debtor's estate; he ought therefore to have deducted that out of the gross debt, and craved relief against his co-cautioner only for half of the balance. The interest of the accumulate sum, on the adjudication of Frenchland, comprehended interest of the original bond; and yet, in his adjudication of Castle-Somerville, he states the whole interest thereon as due. He must account for the full sum he received; stating it against the sums due on the original bond, whether or not it arose by accumulations on Frenchland; for co-cautioners must act *bona fide*, and not take advantages against each other.

THE LORDS found, That the adjudication deduced by Mr John Lookup against James Somerville, was deduced for more than was due to him; and found, That it ought to be restricted to, and subsist as a security for, the principal sum and annualrents only, due to the said Mr John Lookup.*—(See CAUTIONER.—SOLIDUM, *et pro rata*.)

Muckle, Reporter.

Act. H. Home.

Alt. A. Macdowal.

Clerk, Justice.

Fol. Dic. v. 3. p. 5. D. Falconer, v. 2. p. 293.

1759. January 13.

CREDITORS of ALISON of Dunjop, against AGNES and MARGARET AUCHINLECKS.

No 29.
No nullity in an adjudication, that the accumulate sum had been left blank in the decree.

IT was *objected* by the competing creditors of Dunjop, against an adjudication produced for Agnes and Margaret Auchinlecks, which had been led by Robert Auchinleck, their grandfather, That the accumulate sum was blank in the decree of adjudication.

THE LORDS, upon advising petition and answers, found, That the accumulate sum not being filled up, is no nullity in the adjudication.'

Restricted, because credit had not been given, for rents re-

It was further *objected*, That allowance had not been given for certain rents possessed by Robert, the adjudger, before the date of the adjudication: And the fact been clearly proved,

* Lord Kames, in his second Volume of Remarkable Decisions, notices the same case, thus:— In a ranking of the creditors of Castle-Somerville, an objection was stated against the interest produced for Mr John Lookup, that he had knowingly adjudged for more than was due; and though here was a plain *mala fide pluris petitio*, yet, out of regard to equity, the Court sustained the adjudication, as a security for the principal and interest, without expences or accumulations: After which, there can scarce be any prospect of cutting down an adjudication *in totum* for a *pluris petitio*.
Remarkable Decisions, No 127. p. 271.