

1771. July 31. EDWARD TYSON *against* ALEXANDER CUNNINGHAM, &c.

ADJUDICATION.

Effect of Objections thereto in a Ranking.

[*Faculty Collection, V. p. 295 ; Appendix I. ; Adjudication, 5.*]

HAILES. The only purpose of this adjudication was to draw L.200 sterling out of the subject, to the prejudice of Dunbar's creditors : The debt had been due little more than a year, when the adjudication was deduced without any diligence. It was preferable to all Dunbar's creditors. The only preferable debt to it was Janet Fleming's, and that debt was so small, and the fund of payment so large, that no one would have thought of adjudging merely for security.

COALSTON. There was a *summum jus* in leading this adjudication. A creditor may adjudge for his security, and we cannot enter into the question whether that measure is necessary or not ; but I would lay hold of the objection as to the summons being too soon called, and restrict the adjudication.

PRESIDENT. If you sustain the adjudication in this case, for penalties, you must in every one ; for never was there an adjudication deduced upon less occasion.

On the 31st July 1771, " The Lords restricted the adjudication to principal, annualrents, and necessary expenses accumulated at the date of the adjudication ;" altering Lord Gardenston's interlocutor.

*Act. Hlay Campbell. Alt. R. M'Queen.*

1771. June 21. COLIN ALISON, Wright in Edinburgh, *against* ELIZABETH FORBES and ANNE and MARGARET ALISONS, his Daughters.

PROOF.

Trust, how competent to be proved.

[*Faculty Collection, V. p. 299 ; Dictionary, 12,760 ; Supplement, 5—630.*]

MONBODDO. The heir of a party may be examined, as well as the party himself, for proving the trust. Witnesses may be examined, not for proving the trust, but for proving circumstances which may infer trust.