

fect execution might follow by adjudication : And, by the summons whereupon the decret proceeded, it was only craved that the estate should be affected : And, by the adjudication, Bramford's estate was only affected ; and the adjudger was content to declare that he should affect no other estate.

Yet some of the Lords were of the opinion, That the decret not being in these terms,—That the Lords decerned, *cognitionis causa*, to the effect execution might follow against Bramford's estate,—it was *in arbitrio judicis*, to sustain the decret to be a ground of adjudication or not : And that Mr William Weir, having been accessory to the appeals, at the instance of Callender, from the Lords of Session, deserved no favour. And it was carried by plurality, that the adjudication should be reduced.

Newtoun, *Reporter*. Mr John Hay, *Clerk*.

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1676. December 5. RUTHERFORD against WEDDEL.

The Lords, in a suspension at the instance of a bankrupt, who was prisoner, did allow him to come out without the habit ; because it was represented, that the debt was, for the most part, not contracted by himself, but by his father : Albeit some of the Lords were of the opinion, that the Act of Sederunt bearing no distinction, and being made upon good consideration, and conform to the practice of all other nations, that bankrupts should be known, by a habit, to be persons that deserved no trust ; and that others may be affrighted from contracting or undergoing debts which they are not able to pay : And that the pretence foresaid was frivolous ; it not being presumable that a person would be heir, and become liable to debts that he had not contracted, unless there were effects and sufficiency of estate to pay the same : And, if such pretences should be allowed, the law would be altogether illusory.

Gosford, *Reporter*. Mr Thomas Hay, *Clerk*.

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1676. December 22. TAIT against WALKER.

THE children of a second marriage, having pursued the son of the first, for implement of their mother's contract of marriage, and the provisions therein contained in their favours :—

It was ALLEGED, That they were debtors themselves, in so far as they were executors named and confirmed to their father :

And it being REPLIED, That the testament was given up by the mother, they being infants for the time, and she was not their tutrix, and so could not bind them :—

The Lords found, That there was difficulty in the case ; in respect the pursuers were now past 40 years, and they had never questioned or desired to be reponed against the said confirmation. And, on the other part, it was hard that a deed of their mother, having no authority to do the same as tutor or cu-