

that implied? I observe, that particular powers, as to naming some officers of less importance, are expressly granted. The superior might choose to retain the nomination of clerk; because there was an intimate connexion between the jurisdiction bestowed and the jurisdiction retained. The meaning of parties is ascertained by the invariable practice.

On the 1st March, 1769, "the Lords found the right of naming the clerk to be in the Earl of Glencairn."

Act. W. Campbell. *Att.* D. Dalrymple.

Reporter, Auchinleck.

Diss. Pitfour, Gardenston, Auchinleck.

1769. March 7. ROBERT RUTHERFORD *against* WILLIAM and THOMAS BELLS, &c.

ADJUDICATION.

An adjudication sustained as a security, notwithstanding a *pluris petitio*.

[*Faculty Collection, IV. 173; Dictionary, 117.*]

AUCHINLECK. There are three separate accumulations, but the error is only in one. I would restrict as to the heritable bond: every thing else is regular enough.

PITFOUR. It is averred that the only intrusions, not allowed in accounting, were after the summons. I doubt as to cutting down all adjudications *in totum*, on that account.

GARDENSTON. When a creditor takes a rigorous decret of adjudication, he must beware and not wilfully demand more than is due. Here there is evidence of a recent payment; and that this payment was after the summons raised, is so much the worse.

KAIMES. The case here is with a debtor, not with competing creditors. Where there is a malicious *pluris petitio*, the Court may go far in way of punishment. The circumstances of this case show that there was no intention of a wilful *pluris petitio*. I would, however, take away all accumulations.

PRESIDENT. The interlocutor is rigorous: there was no intention to deceive. The adjudication must subsist as a security for principal sum and annualrents, from the date of the adjudication.

On the 17th March 1769, "the Lords found that the adjudication quarrelled must subsist as a security for principal sum and interest, from the date of the adjudication;" altering Lord Gardenston's interlocutor.

Act. W. Nairne. *Att.* J. Swinton, jun.

Diss. Gardenston, Kennet.