

(NATURE and EFFECT.)

No 21.

must be entitled, upon every breach of the contract, to demand payment of the liquidate penalty as the indemnification of his expences.

3^{to}, Richard Alcorn confirmed the 300 merks bond, and the confirmation mentions the corroboration thereof; the bond of corroboration, therefore, though not explicitly, is yet virtually adjudged for, as it arises totally from the contents of the original bond; and, if the original bond is adjudged for, the interest of the creditor in the whole debt must thereby be effectually secured.

THE LORDS remitted to the Lord Ordinary, with power to call and hear parties.

Interlocutor.

In consequence of this remit, the Lord Ordinary found "the pursuer's adjudication in question subsists only as a security for his expences, so far as he has right to the penalties; and further finds, That it subsists as a security only for Richard Alcorn's share of the sums contained in the bond of corroboration of the bond for four thousand merks, and of the sums due by the original bond of three thousand merks."

For E. of Home, *Rae*.For Wilson, *M^eQueen*.Clerk, *Home*.

April 9, 1772.

* * This case was appealed. The House of Lords "ORDERED and ADJUDGED, That the appeal should be dismissed, and the interlocutors therein complained of, be affirmed."

*P. Chalmers.**Fol. Dic. v. 3. p. 12. Fac. Col. No 87. p. 154.*

1740. February 13.

DICKSON of Kilbucho, *against* APPARENT HEIR of Poldean.

No 22.

AN adjudication, upon a special charge, carries bygones, from the death of the predeceffor, who was last infest, in the same way as they are carried by an adjudication *cognitionis causa*; and, for the same reason, *i. e.* because there is no other method invented, in law, for carrying bygones, in these cases.

Fol. Dic. v. 1. p. 10.

1783. January 21.

Ranking of the CREDITORS of the YORK-BUILDINGS COMPANY.

No 23.
A creditor by an English penal bond, after obtaining decret of adjudication, is entitled to interest on the penal sum.

OF the penal bonds, issued by the York-buildings Company, some had been secured by adjudication against the Company's estates in Scotland, before twenty years had elapsed from the term of payment. The creditors in these having insisted to be ranked for the penal sums contained in the decreets of adjudication, and for interest thereafter till paid, the common agent

Pleaded: By the tenor of these bonds, the obligation of the debtor can in no event exceed the penal sum; nor is effect, by the practice of England, ever given

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to them beyond that extent. Hence, as the object of the diligence of adjudication is the security of the debt, and not its enlargement, the creditors can be ranked only for the penal sum.

No 23.

Answered: Though, to the effect of restoring debtors against the penal consequences of an expired legal, adjudications be now considered merely as securities, they are, in their proper nature, sales under reversion. Justice, therefore, will not permit the reverser, by delaying to redeem, to forfeit his creditor of the advantage the latter would have derived from the use of his money.

THE LORDS found these creditors entitled to be ranked, not only for the penal sums, but also for the interests thereon, after the date of their several decreets of adjudication.

Lord Reporter, *Monboddo*.
Hepburn, Elphinston.
Clerk, *Colquhoun*.

For the Common Agent, *Lord Advocate (Dundas), Blair, Buchanan*.
For the other Creditors, *Ilay Campbell, Wight*.

Fol. Dic. v. 3. p. 12. Fac. Col. No 87. p. 134.

Craigie.

1783. *January 31.*

Ranking of the CREDITORS of the YORK-BUILDINGS COMPANY.

AMONG the Creditors of this Company by penal bonds, some, by way of liquidating the damage they sustained, by losing the interest of their money after twenty years had elapsed from the term of payment, obtained decret in their processs of adjudication, not only for the penal sums, but also for a fourth part more, and claimed to be ranked accordingly.

It appeared, from the opinion of English counsel, that bonds of this sort at no period created a demand for more than the penal sums.

THE LORDS, therefore, found, ' That the adjudications, when led for more than ' the penal sums in the bonds, were to be restricted to a security for payment of ' an accumulated sum, not exceeding the penal sums and interest of such accumulated sum, from the date of such adjudication, till paid.'

Lord Reporter, *Monboddo*.

Partibus ut supra.

Fol. Dic. v. 3. p. 12. Fac. Col. No 88. p. 135.

Craigie.

No 24.

The accumulated sum, in an adjudication on English bonds, restricted to the penal sums.